Supreme Court, U.S.
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No. _____

In the

Supreme Court of the United States

MINGTAI FIRE & MARINE INSURANCE CO., LTD.,

Petitioner,

vs.

UNITED PARCEL SERVICE, INC. and
UNITED PARCEL SERVICE INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL W. LODWICK
Counsel of Record
PORTER, GROFF & LODWICK
A LAW CORPORATION
110 Pine Avenue, 11th Floor
Long Beach, California 90802-4430
(562) 495-1200

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED FOR REVIEW

The United States and the People's Republic of China are two of the parties to the Warsaw Convention, a multilateral treaty that provides the exclusive remedy for losses during air transportation between contracting states. This case presents a claim for cargo lost during air transit from Taiwan to California. The U.S. recognizes the PRC as China's sole legal government, and acknowledges that Taiwan is part of China. President Clinton has stated publicly that the U.S. has a "one China" policy and does not support Taiwan independence or statehood – a position that mirrors that of the United Nations.

Based on an argument by the United States as amicus curiae, the court of appeals held that the U.S. treats Taiwan as independent of China. The amicus argued that the U.S. does not recognize in China a right to bind Taiwan to its international treaty commitments. As authority for its two-Chinas argument, the amicus cited the Taiwan Relations Act, a U.S. domestic statute that provides for "unofficial relations with the people on Taiwan."

1. **Separation of powers.** Did the court of appeals infringe the Constitution's separation of powers when it held that the Taiwan Relations Act, rather than the president, determines U.S. foreign policy?

2. **Political-question doctrine.** Did the court of appeals violate this Court's political-question doctrine – or traverse the Constitution's delegation to the president of exclusive authority to recognize foreign sovereigns – by deciding the China question in contravention of the president's determination of that question? Was the amicus position entitled to greater

QUESTIONS PRESENTED FOR REVIEW – Continued

deference than the president's own foreign-policy pronouncements?

3. **Act-of-state doctrine.** Did the court of appeals violate this Court's act-of-state doctrine when it held that the PRC's accession to the Warsaw Convention was not binding on Taiwan?

4. **Treaty of the United States.** Did the court err in refusing to enforce the Warsaw Convention, a treaty to which the U.S. and China both subscribe?

LIST OF ALL PARTIES

Petitioner Mingtai Fire & Marine Insurance Co., Ltd. is a corporation organized under the laws of the Republic of China. Its principal place of business is in Taipei, Taiwan, ROC. Its shares are not publicly traded in the United States.

Respondent United Parcel Service, Inc. is a corporation organized under the laws of the State of Ohio, with its principal place of business in the State of Georgia. Though UPS may be planning to make an initial public offering, it currently is a closely-held corporation and has no parent company, subsidiary, or affiliate that has issued shares to the public.

Respondent United Parcel Service International, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of Georgia. It is closely held, and currently has no parent company, subsidiary, or affiliate that has issued shares to the public.

In the court of appeals, the United States of America appeared as an amicus curiae.

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The opinion of the court of appeals (Pet. App. 1-10) is reported at 177 F.3d 1142. Although designated "For Publication," the opinion of the district court (Pet. App. 11-22) is not reported.

JURISDICTION

The court of appeals entered judgment (Pet. App. 10) on May 25, 1999. This petition for a writ of certiorari was filed on August 23, 1999. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves a treaty of the United States, the Warsaw Convention, 49 U.S.C. § 40105 note (Pet. App. 23-49); a domestic statute, the Taiwan Relations Act, 22 U.S.C. §§ 3301-3316 (Pet. App. 50-72), and the following clauses of the Constitution:

U.S. CONST. art. II, § 1:

The executive Power shall be vested in a President of the United States of America. . . .

U.S. CONST. art. II, § 2, cl. 2:

He shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. CONST. art. II, § 3:

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their

Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws are faithfully executed, and shall Commission all the Officers of the United States.

STATEMENT OF THE CASE

Petitioner Mingtai Fire & Marine Insurance Co., Ltd. is a Taiwanese insurance company. It insured a shipment of CPU Pentium-90 computer equipment, made in Taiwan and sold to a U.S. buyer, against the risks of loss and damage during air transportation from Taipei, Taiwan to San Jose, California. Respondents accepted the goods for shipment but never delivered them. Mingtai paid the loss ($83,454.80) and brought this action to recover indemnity from respondents.

Mingtai stated its claim under the Warsaw Convention[1] – an international treaty that provides the exclusive remedy for cargo losses during international air transportation if both the place of departure and the place of destination are within the territory of a state that ratified or acceded to the Convention (termed a "High Contracting Party"[2]). Jurisdiction in the district court was based on 28 U.S.C. § 1331. Mingtai contended the claim arose under a treaty of the United States. The district court refused to apply the Convention, but found an alternative basis for jurisdiction under the Federal Aviation

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[1] Convention for the Unification of Certain Rules Relating to International Transportation by Air Signed at Warsaw on the 12th of October 1929, 49 Stat. 3000, T.S. 876, codified in note following 49 U.S.C. § 40105 (hereinafter "Warsaw Convention") (Pet. App. 23-49).

[2] *Id.*, arts. 1, 18 (Pet. App. 24-25, 34-35).

Administration Authorization Act ("FAAAA").[3] Recently, the Ninth Circuit has held that the district courts have jurisdiction of air claims under federal common law when the Warsaw Convention does not apply.[4]

The U.S. ratified the Convention on July 31, 1934, and it entered into force in this country on October 29, 1934.[5] On July 20, 1958, the People's Republic of China (PRC) acceded to the Convention for "the entire Chinese territory including Taiwan."[6] It entered into force in China on October 18, 1958.[7] In 1959 the U.S. regarded this accession "as being without legal effect" because it recognized the Republic of China (ROC) "as the only legal Government of China and [did] not recognize the so-called 'People's Republic of China'. . . ."[8]

Twenty years later, President Carter reversed this position. Announcing the Joint Communiqué on the Establishment of Diplomatic Relations,[9] he formally recognized the PRC as the sole legal government of China and withdrew recognition from the ROC.[10] The president also "acknowledge[d] the

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[3] Federal Aviation Administration Authorization Act, 49 U.S.C. § 41713(b)(3) (1997).

[4] Read-Rite Corp. v. Burlington Air Express, Ltd., No. 98-16962 (9th Cir. Aug. 12, 1999), slip op. at 9076-82.

[5] 2 SHAWCROSS & BEAUMONT, AIR LAW A 21 (ed. by Peter Martin & Elizabeth de Montlaur Martin) (1999 Supp.) (hereinafter "2 SHAWCROSS & BEAUMONT").

[6] *Id.* at A 17, A 22 n.8.

[7] *Id.* at A 17.

[8] Note from U.S. Dep't of State to Ambassador of Polish People's Republic, Washington, D.C. (Sept. 17, 1959) (U.S. Dep't of State File # 399.72/7-359) (hereinafter cited by the file number) at 3 (Pet. App. 73-74).

[9] Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China (Jan. 1, 1979) (hereinafter "Joint Communiqué"), *reprinted in* 1978 PUB. PAPERS: 2 JIMMY CARTER at 2264-65 (Pet. App. 83-87).

[10] Diplomatic Relations Between the United States and the People's Republic of China, United States Statement (Dec. 15, 1978) (hereinafter

Chinese position that there is but one China and Taiwan is part of China."[11] Mingtai (and almost everyone concerned with air transportation between the U.S. and Taiwan) believed the U.S. had unquestionably accepted the legal effect of China's accession to the Warsaw Convention for "the entire Chinese territory including Taiwan."[12] The only reported decision of the issue by an Article III court held that this was so.[13]

But respondent United Parcel Service (UPS) had other ideas. As the exclusive remedy for losses during air transportation, the Warsaw Convention prescribes a minimum limitation of liability[14] – customarily converted into U.S. currency as $20 per kilogram of the weight of goods lost or damaged.[15] This posed a problem for UPS because its air waybill imposed a limitation of just $100 per shipment, regardless of weight.[16] Additionally troublesome for UPS was the fact that the Convention requires the air carrier to issue a waybill containing specific items, absent which the carrier forfeits the right to limit liability.[17] In this case, Mingtai's claim to the full value of the lost cargo was based, inter alia, on an omission from the air waybill which would have deprived UPS of the $20-

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"U.S. Statement"), *reprinted in* 1978 PUB. PAPERS: 2 JIMMY CARTER at 2266 (Pet. App. 88-89).

[11] Joint Communiqué, *supra* note 9, 1978 PUB. PAPERS: 2 JIMMY CARTER at 2264 (Pet. App. 84).

[12] 2 SHAWCROSS & BEAUMONT, *supra* note 5, at A 17, A 23 n.8.

[13] Atlantic Mut. Ins. Co. v. Northwest Airlines, Inc., 796 F. Supp. 1188, 1191 (E.D. Wis. 1992), *aff'd*, 24 F.3d 958 (7th Cir. 1994).

[14] Warsaw Convention, *supra* note 1, art. 22 (Pet. App. 36-37).

[15] *Id.*

[16] Order Granting Defendants' Motion for Summary Judgment and Denying in Part and Granting in Part Plaintiff's Counter-Motion for Summary Judgment, filed Dec. 12, 1997 (hereinafter "District Court Order") at 10-11 (Pet. App. 22).

[17] Chan v. Korean Air Lines, Ltd., 490 U.S. 122, 131-34 & 131 n.4. (1989) (failure to comply with art. 4 requirements for baggage checks).

per-kilo limitation. Faced with these deficiencies, UPS could limit liability only by convincing the district court to throw out the Warsaw Convention. This would leave UPS unfettered by the treaty's prohibition of its contractual $100-per-shipment limitation. UPS accomplished this result by convincing the district court not to follow the one reported Article III case on point,[18] but to rely on a bankruptcy judge's view that the Warsaw Convention does not apply to Taiwan because it is not part of China.[19]

The district court also relied on a Ninth Circuit ruling that Taiwan is a "foreign state" within the meaning of the Foreign Sovereign Immunities Act (FSIA).[20] In that case, the court issued a writ of mandamus to quash a subpoena served on an employee of the Taipei Economic Representative and Cultural Office – the "Taiwan instrumentality" in the Taiwan Relations Act.[21] "Although the United States does not maintain diplomatic relations with Taiwan," said the court, "Taiwan is a 'foreign state,' within the meaning of the FSIA."[22]

In this case, the court of appeals affirmed the district court's ruling that Warsaw does not apply to flights to or from Taiwan, and that UPS could limit its liability to $100. Both courts thus refused to enforce a treaty that embodies both U.S. law and international law. The Warsaw Convention is administered by the International Civil Aviation Organisation (ICAO), the United Nations specialized agency responsible

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[18] Atlantic Mutual, 796 F. Supp. 1188.

[19] District Court Order, *supra* note 16, at 4, 6-7 (Pet. App. 15, 17-18) (citing In re Schwinn Bicycle Co. v. AFS Cycle & Co., 190 B.R. 599 (Bankr. N.D. Ill. 1995)).

[20] Taiwan v. United States Dist. Court, 128 F.3d 712, 715 (9th Cir. 1997).

[21] Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, at § 3309 (1994) (Pet. App. 64-65).

[22] Taiwan, 128 F.3d at 715 (citing the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611 (1994)).

for air treaties.[23] Since the U.S. accepts the U.N.'s determination that the PRC speaks for all China, including Taiwan,[24] the courts of this country should enforce the Convention between the U.S. and Taiwan.

Besides contradicting the U.N. position on China, the result below contravenes this Court's act-of-state doctrine, which prohibits judicial review of a foreign sovereign's act within its own territory.[25] To avoid a fatal collision with this entrenched federal principle, the district court concluded that Taiwan was a separate foreign state.[26] While saying it could not decide the political question of whether China's accession to the Convention was effective for Taiwan, it effectively decided the question.[27]

Derived from the constitutional separation of powers, the political-question doctrine prohibits the judiciary from reviewing political decisions made by the political branches.[28] Under this doctrine, the courts below had no power to determine whether Taiwan was within or beyond China's boundaries. As this Court has written,

> Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive branches of any government conclusively binds the judges, as well as all other officers,

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[23] 1 Peter Martin, J.D. McLean, Elizabeth de Montlaur Martin, Rod Margo & J.M. Balfour, SHAWCROSS & BEAUMONT, AIR LAW § II(15) (1999 Supp.) (hereinafter "1 SHAWCROSS & BEAUMONT").

[24] G.A. Res. 2758 (XXVI), U.N. GAOR (Oct. 25, 1971), 26th Sess., Supp. No. 29, U.N. Doc. A/8429 (Pet. App. 75).

[25] W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., 493 U.S. 400, 405 (1990).

[26] District Court Order, *supra* note 16, at 5-6 (Pet. App. 16-17).

[27] *Id.*

[28] Baker v. Carr, 369 U.S. 186, 211-13, 217 (1962).

> citizens, and subjects of that government. This principle has always been upheld by this court. . . .[29]

The court of appeals, in turn, did not address the act-of-state doctrine;[30] it focused solely on the political nature of the question before it.[31] Though it discerned, correctly, that whether Taiwan is part of China is a political question that should not be decided by the courts, it concluded, incorrectly, that the U.S. does not recognize China's claim to Taiwan. Finding that the U.S. regards Taiwan as separate, the court of appeals held that China's accession to the Warsaw Convention does not apply to Taiwan.[32]

The court reached this result without addressing the president's foreign-policy pronouncements. In an October 1997 news conference with China's President Jiang Zemin, President Clinton emphasized his one-China policy.[33] In June 1998, he stated unequivocally that the U.S. does not support Taiwan independence or statehood.[34] The Constitution's separation of powers[35] required the court of appeals to accord the president's one-China policy the greatest deference. But the court's opinion does not mention the foreign policy of the one person empowered by the Constitution to determine that policy. Instead, it focuses solely on the policy position argued by the amicus – which directly contradicts the president's view.

The Department of Justice filed an amicus brief in the court of appeals, and argued that Taiwan could not be bound

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[29] Jones v. United States, 137 U.S. 202, 212 (1890).

[30] Mingtai Fire & Marine Ins. Co. v. United Parcel Service, 177 F.3d 1142, 1144-47 (9th Cir. 1999) (Pet. App. 3-9).

[31] *Id.*

[32] *Id.* at 1147.

[33] President's News Conference with President Jiang, 33 WEEKLY COMP. PRES. DOC. 1657, 1673, 1678 (Oct. 29, 1997) (Pet. App. 90-91).

[34] Remarks in a Roundtable Discussion on Shaping China for the 21st Century, 34 WEEKLY COMP. PRES. DOC. 1243, 1267, 1272 (June 30, 1998) (Pet. App. 94).

[35] U.S. CONST. art. II, § 3 (Pet. 2).

by China's accession to the Warsaw Convention.[36] The amicus plumped, in effect, for a "two-Chinas policy." In deciding this issue, the court of appeals accorded the amicus complete deference. The court failed to discuss the president's China policy, and adopted contrary representations by the president's subordinates in the Executive branch. By declining to defer to the president's view, the court decided a political question contrary to the president's determination of that question.

REASONS FOR GRANTING THE PETITION

Petitioner, a Taiwanese insurance company, asks this Court to reverse the court of appeals because it refused to enforce the Warsaw Convention[37] – a treaty between the U.S. and many nations, including China. The constitutional and legal reasons for granting relief have been suggested above and will be developed below. But there are additional, pragmatic reasons why the decision should not be allowed to stand.

First, the decision threatens friction with China. The amicus argument drew sharp criticism from the Chinese embassy in Washington. In a note protesting the amicus brief – sent to the U.S. Department of State while the appeal was pending – China challenged the view that its accession to the Warsaw Convention does not bind Taiwan, and claimed that this view breached U.S. diplomatic commitments and international law.[38]

Second, the decision will harm Taiwan's economy. The ruling created a furor on Taiwan, where it is felt that denying the Convention's application to air commerce between Taiwan

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[36] Brief for the United States as Amicus Curiae, Docket No. 98-15088 (9th Cir. 1998) (hereinafter "Amicus Brief") at 1-2.

[37] Warsaw Convention, *supra* note 1.

[38] Note from Embassy of the People's Republic of China to U.S. Dep't of State, No. CE 087/98 (Oct. 16, 1998) (hereinafter "Chinese Embassy Note") at 1 (Pet. App. at 101-03).

and the U.S. will harm Taiwan's commercial intercourse and weaken its economy. In response, the ROC's Ministry of Foreign Affairs encouraged Mingtai to file this petition. Although Taiwan's business community and the Ministry view this as an economic (not a political) question, they share China's view that the Convention applies to Taiwan.

1. The decision is constitutionally infirm because it contradicts the president's decision of a foreign-policy question and thus contravenes the separation of powers.

The court of appeals' decision is constitutionally infirm because it contradicts the president's one-China policy, and thereby decides a political question – more particularly, a foreign-policy question – in a manner contrary to the president's determination of that question.

The Constitution is a laconic instrument, and its brevity is seldom more evident than on the political question raised by this petition. Of the power to recognize foreign states, the Constitution says only that "[t]he executive Power shall be vested in a President of the United States of America,"[39] and the President "shall receive Ambassadors and other public Ministers. . . ."[40] It is well-settled that the power to receive includes the power to refuse[41] – and hence the power to recognize, which is at the core of this case.

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[39] U.S. CONST. art. I, § 1 (Pet. 1).

[40] *Id.* art. II, § 3 (Pet. 2).

[41] 4 JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW, AS EMBODIED IN DIPLOMATIC DISCUSSIONS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS, INTERNATIONAL AWARDS, THE DECISIONS OF MUNICIPAL COURTS, AND THE WRITINGS OF JURISTS 473-548 (U.S. Gov't Printing Office 1906) (hereinafter "4 MOORE").

This Court has held that the president is the "sole organ of the federal government in the field of international relations. . . ."[42] This principle – even the very language – derives from the "Marshall doctrine," enunciated by John Marshall in the House of Representatives in 1800, the year before he was appointed Chief Justice of this Court. Responding to attacks on President John Adams for remanding a fugitive to British custody, as the Jay Treaty permitted, the future Chief Justice asserted: "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."[43] Ten years earlier, Vice-President Thomas Jefferson had refused to credential a consul sent by the French Republic because the consul's commission was addressed to Congress, not the president. Jefferson insisted that "as the President was the only channel of communication between the United States and foreign nations, it was from him alone 'that foreign nations or their agents are to learn what is or has been the will of the nation. . . .'"[44]

This Court has long held that the president's determination whether to recognize a foreign state is conclusive on the courts.[45] So, too, is the president's decision to recognize the *de jure* ruler of a foreign state.[46] In *Baker v. Carr*, this Court, speaking by Justice Brennan, observed that "[t]he nonjusticiability of a political question is primarily a function of

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[42] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936).

[43] 10 ANNALS OF CONGRESS 596, 613-14 (1800).

[44] 4 MOORE, *supra* note 41, at 680-81 (quoted material omitted).

[45] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 410 (1964); United States v. Pink, 315 U.S. 203, 229-30 (1942); Kennett v. Chambers, 14 How. (55 U.S.) 38 (1852) (whether to recognize the Republic of Texas); United States v. Palmer, 3 Wheat. (16 U.S.) 610 (1818).

[46] *See* cases in note 45 *supra*. *See also* Foster v. Neilson, 2 Pet. (27 U.S.) 253, 307 (1829), *overruled on other grounds in* United States v. Percheman, 7 Pet. (32 U.S.) 51, 89 (1833).

the separation of powers."[47] In this instance, as in *Baker*, the Constitution delegates to the president alone the power to recognize China's claim to Taiwan. Although, as Justice Brennan noted, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance,"[48] many questions do lie beyond. These include questions that "involve the exercise of a discretion demonstrably committed to the executive or legislature,"[49] and those that "uniquely demand single-voiced statement of the Government's views."[50]

The question whether the president recognizes a foreign sovereign's claim to a particular territory not only demands a single-voiced statement of U.S. policy; it involves the use of a discretion allotted by the Constitution to the president alone.[51] Thus, presidents from Woodrow Wilson through Herbert Hoover could balk at recognizing the USSR, yet President Franklin Delano Roosevelt could, constitutionally, grant such recognition.[52] Though presidents from Harry S. Truman through Lyndon B. Johnson could refuse to recognize the PRC, Presidents Nixon and Carter could, constitutionally, move to recognize it as China's sole legal government.

Thus, the court erred in adopting the amicus argument for a separate Taiwan when faced with evidence of President Clinton's resolve upon a one-China policy.[53] Whether this decision is viewed as misplaced deference to the wrong

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[47] 369 U.S. 186, 210 (1962).

[48] *Id.* at 211.

[49] *Id.*

[50] *Id.*

[51] *Id.* at 212.

[52] United States v. Belmont, 301 U.S. 324, 330 (1937).

[53] Public statements about the one-China policy – by President Clinton and Secretary Albright – were quoted in Mingtai's Reply Brief of Appellant at 4-6 (hereinafter "Reply Brief"), and presented again at oral argument. Audio recording of oral argument, Docket No. 98-15088, San Francisco (Mar. 10, 1999) (hereinafter "Oral Argument Tape").

source for U.S. foreign policy or as an unconstitutional determination of foreign policy, the court of appeals should be reversed.

2. The court erred in holding that Congress has recognized Taiwan as a state independent of China.

The court of appeals framed its ruling with the Taiwan Relations Act[54] and annotations drawn from the Department of State's *Treaties in Force*.[55] Citing the Act's provision for continued application of U.S. laws to Taiwan after derecognition, the court inferred: "These provisions, and the Act generally, strongly imply that, despite the absence of official relations, the United States continues to deal separately with Taiwan."[56] But it does not follow that Taiwan is not part of China.

The court emphasized that the Act "gave no indication that existing or future agreements with the newly recognized China would be binding upon Taiwan."[57] Yet the Act would be altogether unnecessary if the U.S. did not concede that Taiwan is part of China. The U.S. could formally recognize the PRC as sovereign on mainland China and the ROC as sovereign on Taiwan.

At oral argument, the court described the Taiwan Relations Act as "controlling federal law"[58] because it implies that Taiwan is separate from China. But the Act is a domestic statute – not a treaty with Taiwan.[59] In fact, the Act was drafted to avoid an official relationship with the ROC precisely because it had its origins in the *de*recognition of the

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[54] 22 U.S.C. §§ 3301-3316 (Pet. App. 50-72).

[55] Mingtai, 177 F.3d at 1146 (Pet. App. 7-8).

[56] *Id.* (quoting 22 U.S.C. §§ 3303(a), (b)(1), and (c)) (Pet. App. 7).

[57] *Id.* (Pet. App. 7).

[58] Oral Argument Tape, *supra* note 53.

[59] New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc., 954 F.2d 847, 852 (2d Cir.), cert. denied, 506 U.S. 827 (1992).

ROC.[60] Nor can Congress constitutionally recognize a state that the president declines to recognize, or vote that a foreign state may not claim a given territory. The Constitution vests that power in the president,[61] who is – in this Court's words – "the sole organ of the federal government in the field of international relations."[62] As the American Law Institute explains, "The Supreme Court long ago affirmed the binding power of Presidential determinations as to sovereignty over territory."[63]

Taiwan's derecognition was the price of diplomatic relations with China – as President Nixon realized nearly 30 years ago.[64] Said the en-banc D.C. Circuit: "The PRC stipulated that full mutual diplomatic recognition was preconditioned on United States agreement to cease all diplomatic and other official relations with the ROC, to withdraw United States military units from Taiwan, and to terminate the Mutual Defense Treaty with the ROC."[65] This is underscored by Justice Brennan's accurate assessment – in his *Goldwater* dissent[66] – of why recognizing China required termination of the Mutual Defense Treaty:

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[60] 22 U.S.C. § 3301(a) (Pet. App. 52-54).

[61] U.S. CONST. art. II, § 3 (Pet. 2); United States v. Pink, 315 U.S. at 329.

[62] United States v. Curtiss-Wright, 299 U.S. at 320.

[63] RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW (hereinafter "RESTATEMENT") § 204 n.1 (1987).

[64] JAMES MANN, ABOUT FACE: A HISTORY OF AMERICA'S CURIOUS RELATIONSHIP WITH CHINA, FROM NIXON TO CLINTON 46 (1999) (hereinafter "MANN, ABOUT FACE").

[65] Goldwater v. Carter, 617 F.2d 697, 700 (D.C. Cir.) (en banc), *vacated*, 444 U.S. 996 (1979) (citing Mutual Defense Treaty (Dec. 2, 1954), U.S.-ROC, T.I.A.S. No. 3178 (terminated 1979)). *See also* 1 S. REP. No. 96-7, 96th Cong., 1st Sess. at 5 (1979), *reprinted in* 1979 U.S.C.C.A.N. 36, 40.

[66] Goldwater v. Carter, 444 U.S. 996, 1006-07 (1979) (Brennan, J., dissenting).

> Abrogation of the defense treaty with Taiwan was a necessary incident to Executive recognition of the Peking Government, because the defense treaty was predicated upon the now-abandoned view that the Taiwan Government was the only legitimate authority in China.[67]

While withdrawing recognition and terminating the treaty, President Carter proposed the Taiwan Relations Act as a way of enabling the U.S. to recognize China without leaving Taiwan out in the cold:

> I have paid special attention to ensuring that normalization of relations between our country and the People's Republic of China will not jeopardize the well-being of the people of Taiwan. The people of our country will maintain our current, commercial, cultural, trade, and other relations with Taiwan through nongovernmental means. Many other countries in the world are already successfully doing this.[68]

President Carter suggested an *unofficial* relationship between peoples – not an official liaison between states. Thus, the Taiwan Relations Act – which embodies this idea – does not repugn U.S. acknowledgment of China's claim to Taiwan. It treats Taiwan as "a non-state territorial entity which is *de jure* part of China but under separate administration."[69]

Realizing the drawback of reading between the lines of this Act,[70] the court of appeals sought guidance from *Treaties*

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[67] *Id.* at 1007.

[68] Diplomatic Relations Between the United States and the People's Republic of China, Address to the Nation (Dec. 15, 1978) (hereinafter "Address to Nation"), *reprinted in* 1978 PUB. PAPERS: 2 JIMMY CARTER at 2265 (Pet. App. 86).

[69] MALCOLM N. SHAW, INTERNATIONAL LAW 148-49 (2d ed. 1986).

[70] Mingtai, 177 F.3d at 1146 (Pet. App. 7).

in Force.[71] There, the court found references to bilateral treaties made before derecognition of the ROC as treaties with "China (Taiwan)," and bilateral treaties made after China's recognition as treaties with "China." Since the Warsaw Convention is listed as a treaty with "China," the court inferred it is not applicable to Taiwan.[72] But if, after China's recognition, Taiwan is part of China – as the Shanghai[73] and Joint Communiqués[74] acknowledge – listing Taiwan alongside China would be redundant. And treaties with Taiwan that survived derecognition could not be listed as treaties with "China."

Inferences drawn from the Taiwan Relations Act and the terminology of *Treaties in Force* are slender threads on which to hang a decision that takes the benefits of the Warsaw Convention away from Taiwan and the foreigners (including Americans) who use commercial aircraft to trade or visit there. Deciphering these texts did not yield persuasive evidence, and the court was unwilling to "merely rely upon the implications of the Act and the statements in and structure of *Treaties in Force*. . . ."[75] To resolve the appeal, it turned to "the Executive's express position on the issue presented. In an amicus brief and at oral argument, the United States made plain its position that China's adherence to the Convention does not bind Taiwan."[76]

Thus, the court of appeals reached the result the amicus sought – not by its own construction of the Taiwan Relations Act, but by deferring to the gloss offered by the amicus. With

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[71] *Id.* (Pet. App. 7-8).

[72] *Id.* (Pet. App. 8).

[73] The Joint U.S.-China Communiqué, Shanghai (Feb. 27, 1972) (visited Aug. 16, 1999) <www.ait.org.tw/shanghai.html> (hereinafter "Shanghai Communiqué") (Pet. App. 76-82).

[74] Joint Communiqué, *supra* note 9, 1978 PUB. PAPERS: 2 JIMMY CARTER at 2264-65 (Pet. App. 83-87).

[75] Mingtai, 177 F.3d at 1146 (Pet. App. 8).

[76] *Id.* (Pet. App. 8).

no evidence other than the Act's language, the court adopted the amicus' conclusory statement that "[t]he United States has not recognized in the PRC a power to bind Taiwan to the PRC's international commitments."[77] As the next section shows, the president's authoritative foreign-policy statements contradict the court's conclusion.

3. The court's ruling contravenes the president's one-China policy and overlooks the president's refusal to support Taiwan independence and statehood.

The judgment that Taiwan is independent of China contradicts President Clinton's express one-China policy. The president has explained his policy thusly: "[W]e don't support independence for Taiwan, or two Chinas, or one China – one Taiwan. And we don't believe that Taiwan should be a member in any organization for which statehood is a requirement."[78] In his joint press conference with China's President Jiang on October 29, 1997, President Clinton linked this one-China policy to continued unofficial relations with Taiwan:

> I think the most important thing the United States can do is to adhere strictly to the one China policy we have agreed on, [and] to make it clear that within the context of that one China policy, as articulated in the [Joint] Communiqué and our own laws, we will maintain friendly, open relations with the people of Taiwan and China. . . .[79]

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[77] Amicus Brief, *supra* note 36, at 1-2.

[78] Remarks in a Roundtable Discussion on Shaping China for the 21st Century, 34 WEEKLY COMP. PRES. DOC. 1243, 1272 (June 30, 1998) (Pet. App. 94). *Accord* Background Notes: Taiwan, October 1998, released by the Bureau of East Asian and Pacific Affairs, U.S. Dep't of State (visited Aug. 4, 1999) <http://www.usconsulate.org.hk/ustw/98bg.htm> (hereinafter "Dep't of State Background Notes") at 11 (Pet. App. 104).

[79] President's News Conference with President Jiang, 33 WEEKLY COMP. PRES. DOC. 1657, 1673, 1678 (Oct. 29, 1997) (Pet. App. 90).

Even though the U.S. maintains unofficial relations with Taiwan, the president rejects the idea of Taiwan independence. During her visit to China in 1998, Secretary of State Madeleine K. Albright forcefully stated: "[W]e have no change in our China policy. . . . [W]e have a one-China policy – not a "two China," not a "one China and one Taiwan" policy – and we do not support Taiwan independence or their membership in international organizations that are based on statehood."[80]

When President Clinton repeated this formulation in Shanghai two months later,[81] it became known as "the three noes."[82] Said the president: "I had a chance to reiterate our Taiwan policy, which is that we don't support independence for Taiwan, or two Chinas, or one China – one Taiwan. And we don't believe that Taiwan should be a member in any organization for which statehood is a requirement."[83]

Secretary Albright later assured CNN talk-show host Larry King that the president had not misstated U.S. foreign

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[80] Secretary of State Madeleine K. Albright, Press Conference, Beijing Int'l Club Hotel, Beijing, China (Apr. 30, 1998) (visited July 29, 1999) <http://secretary.state.gov/www/statements/1998/980430b.html> at 5 (Pet. App. 92); *see also* Dep't of State Background Notes, *supra* note 78, at 11 (Pet. App. 104).

[81] Remarks in a Roundtable Discussion on Shaping China for the 21st Century, 34 WEEKLY COMP. PRES. DOC. 1243, 1272 (Oct. 29, 1998) (Pet. App. 94-95).

[82] See, e.g., Robert Sutter, *The "Three No's," Congressional-Administration Differences, and U.S. Policy Issues, CRS Report for Congress* (Library of Congress: Congressional Research Service, Oct. 1, 1998) (hereinafter "Sutter, *'Three No's'* "). *See also* MANN, ABOUT FACE, *supra* note 64, at 366.

[83] Remarks in a Roundtable Discussion on Shaping China for the 21st Century, 34 WEEKLY COMP. PRES. DOC. 1243, 1272 (1998) (Pet. App. 94).

policy: "This has been our standard way of saying it."[84] Although the U.S. has "an unofficial relationship with the Taiwanese," mediated by the Taiwan Relations Act, "our policy has been and continues to be a one-China policy, and we want them to have a peaceful dialogue to resolve this issue."[85] Thus, as the vehicle for unofficial relations with Taiwan, the Taiwan Relations Act operates side-by-side with the U.S. acknowledgment that Taiwan is part of China. The court of appeals averred a conflict where none exists.

In a report to Congress issued after the amicus brief was filed, the Congressional Research Service advised the House and Senate that President Clinton's rejection of Taiwan independence dates from at least 1996,[86] and is rooted in assurances given the Chinese by the Nixon administration:

> This marked the first time a U.S. President had publicly affirmed the "three no's," though Clinton Administration officials have been saying them publicly and in private conversations with Chinese leaders publicized by Chinese media since at least 1996. Earlier U.S. statements, including some made privately by senior Administration officials to Chinese counterparts going as far back as 1971 provide a basis for the current "three no's," according to Clinton Administration officials. In particular, the Administration maintains that the "three no's" are consistent with the one China affirmations contained in the communiques of 1972, 1979, and 1982

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[84] Secretary of State Madeleine K. Albright, Interview on CNN's "Larry King Live" with Larry King (July 6, 1998) (visited Oct. 16, 1998) <http://secretary.state.gov/www/statements/1998/980706.html> at 3 (Pet. App. 95).

[85] *Id.*

[86] President Clinton set forth the "three noes" in a private letter to President Jiang, which Secretary of State Warren J. Christopher delivered to the Chinese ambassador in Washington in August 1995. MANN, ABOUT FACE, *supra* note 64, at 330; JOHN W. GARVER, FACE OFF: CHINA, THE UNITED STATES, AND TAIWAN'S DEMOCRATIZATION 79-80 (1997).

> that provide the framework for U.S.-PRC relations. Those communiques reflect agreements between the U.S. and PRC in which the U.S. broke off U.S. official ties with Taiwan; acknowledged the position that there is but one China; and agreed to limit U.S. arms sales to Taiwan provided Beijing pursues a peaceful approach toward the island.[87]

This report confirms that President Clinton adheres to a one-China policy and refutes the court's contrary conclusion. This one-China policy remains in force as this petition goes to print. Responding to the stir caused by ROC-President Lee Teng-hui's remarks about Taiwan's negotiating status *vis-à-vis* China,[88] President Clinton repeated the one-China policy in a press conference on July 21, 1999.[89] Four days later, Secretary Albright did the same.[90] The "three noes" comprise U.S. policy on Taiwan. The court of appeals erred by not considering the president's authoritative statements of this policy. It also infringed the separation of powers by adopting the amicus position offered by some of the president's subordinates.

As the Congressional Research Service reported,[91] President Clinton's refusal to support Taiwan independence does not mark a new direction in U.S. China policy. From the moment National Security Advisor Henry A. Kissinger and

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[87] Sutter, *"Three No's," supra* note 82, at CRS-1 (footnote omitted) (referring to the Shanghai Communiqué (1972) and the Joint Communiqué of 1979)).

[88] President Lee Teng-hui, Responses to Questions Submitted by *Deutsche Welle* (Voice of Germany) (July 9, 1999) (visited August 17, 1999) <http://www.gio.gov.tw/info/99html/991ee/07009.htm> at 3-4.

[89] President's News Conference, 35 WEEKLY COMP. PRES. DOC. 1438, 1440 (July 21, 1999) (Pet. App. 96-99).

[90] Secretary of State Madeleine K. Albright, Press Conference, Four Seasons Hotel, Singapore (July 25, 1999) (visited July 26, 1999) <http://secretary.state.gov/www.statements/1999/990725.html> at 4 (Pet. App. 100).

[91] Sutter, *"Three No's," supra* note 82, at CRS-1.

President Richard M. Nixon worked out the Shanghai Communiqué in 1972, the U.S. has never officially supported Taiwan independence. In a study he prepared while a visiting scholar at the Woodrow Wilson International Center for Scholars, *Los Angeles Times* diplomatic correspondent James Mann explains that President Nixon gave Chou Enlai "several private assurances . . . that Taiwan was part of China, that the United States would not support the independence of Taiwan . . . and [would] move toward normalization with China."[92] In promulgating "the three noes" during their 1998 visits to China, Secretary Albright and President Clinton simply made explicit what had always secretly been true – that the U.S. does not support independence for Taiwan,[93] two Chinas, one China – one Taiwan, or Taiwan statehood.[94]

Even without this declaration of the "three noes," the court of appeals should have declined, under this Court's act-of-state doctrine,[95] to nullify China's accession to the Warsaw Convention for Taiwan. It should have enforced the Convention because the U.S. recognizes the PRC as China's sole legal government and acknowledges its claim to Taiwan.[96] In view of the "three noes," the amicus position is untenable. During oral argument, counsel for the United States could not reconcile the contradiction between the two positions. Counsel simply dismissed President Clinton's "three noes" and

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[92] MANN, ABOUT FACE, *supra* note 64, at 46. For authority, Mann cites "Nixon's notes, 'First Private Meeting,' Feb. 22, 1972, Nixon papers, National Archives." MANN, ABOUT FACE, *supra* note 64, at 382 n.55.

[93] Reply Brief, *supra* note 53, at 4-6.

[94] Remarks in a Roundtable Discussion on Shaping China for the 21st Century, 34 WEEKLY COMP. PRES. PAPERS 1243, 1272 (June 30, 1998) (Pet. App. 94); *see also* Sutter, *"Three No's,"* *supra* note 82, at CRS-10.

[95] Banco Nacional de Cuba, 376 U.S. 398 at 416-18.

[96] Address to Nation, *supra* note 68, 1978 PUB. PAPERS: 2 JIMMY CARTER at 2264-66 (Pet. App. 83-84).

assured the court that the U.S. considers Taiwan independent of China.[97]

This Court does not often see cases in which Executive-branch subordinates manifestly err in stating the president's policy – but this is such a case. This discrepancy between the amicus position and President Clinton's policy probably stems from dissidence within the Department of State about what U.S. policy ought to be. Such differences are historically demonstrable, as Mann relates: "Within most administrations, intense infighting erupted among high-level officials and within executive-branch departments over how to deal with China."[98] Mann discloses that "the process of dealing with China was intensely personalized. Often, no more than one or two officials within an administration were entrusted to handle dealings with China. Sometimes, not even the secretary of state knew what was happening."[99] This sounds like a Tom Clancy novel, but it suggests how the amicus brief could have contradicted the secretary of state and the president.

Obviously, the concept of Taiwan independence has adherents within the Executive branch as well as Congress. But is that sentiment official U.S. policy? Does the power of diplomatic recognition rest with the Department of State's legal adviser and the assistant attorney general – who led the amicus brief – or is it reposed in the president? By favoring the amicus over the president, the court traversed the political-question doctrine and determined a foreign-policy question reserved to the president.[100] Mingtai asked the court to weigh the policy statements of President Clinton and

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[97] Oral Argument Tape, *supra* note 53.

[98] MANN, ABOUT FACE, *supra* note 64, at 11.

[99] *Id.*

[100] U.S. CONST. art. II, § 3 (Pet. 2); United States v. Pink, 315 U.S. 203, 229-30; United States v. Curtiss-Wright, 299 U.S. at 320.

Secretary Albright.[101] Instead, the court dispraised Mingtai's case as "contrary to every indication of executive and legislative intent."[102]

But if the president is "the sole organ of the federal government in the field of foreign relations,"[103] his foreign-policy statements – not those of his subordinates – must receive judicial deference. True, it falls to lower employees in the Executive branch to express the government's view in court, and the courts usually defer to such expressions.[104] But when litigation turns on foreign policy matters, it can be problematic to rely on what the president's subordinates say. As one scholar warned a decade ago – on the Constitution's bicentennial: "Pragmatic concerns about the effective execution of U.S. foreign policy appear to demand that the executive branch of the Government be accorded a salient role when such matters are involved in litigation. These concerns have led courts to accord great respect to the executive branch's positions. This deference, however, may be unjustified in many cases."[105]

Deference is appropriate toward "actions taken by the United States in its international relations upon the instruction of the President and contemporaneously explained in statements personally made by the President to concerned foreign

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[101] Reply Brief, *supra* note 53, at 4-6; Oral Argument Tape, *supra* note 53.

[102] Mingtai, 177 F.3d at 1147 (Pet. App. 9).

[103] United States v. Curtiss-Wright, 299 U.S. at 320.

[104] As this Court has noted, "Respect is ordinarily due the reasonable views of the Executive Branch concerning the meaning of an international treaty." El Al Israel Airlines, Ltd. v. Tsui Yuen Teng, 525 U.S. 155, ___, 119 S. Ct. 662, 671 (1999).

[105] Jonathan I. Charney, *Judicial Deference in Foreign Relations*, 83 Am. J. Int'l L. 805, 806 (1989).

governments."[106] But deference is not due "unilateral statements by an executive branch employee prepared solely to influence the outcome of specific litigation."[107]

"The interests of uniformity and respect for the Executive's conduct of U.S. foreign relations are strongly supported if deference is given to an international action by the United States taken prior to and independently of domestic litigation."[108] President Clinton's public refusal to support Taiwan independence is such an action. "In contrast, internal statements, especially those made in the course of domestic litigation, do not constitute an exercise of the authority to conduct foreign affairs, nor do they necessarily give voice to the desired interests."[109] The amicus argument for treating Taiwan as an independent state was made in the course of domestic litigation, and was not entitled to uncritical acceptance. "Deference should be based only upon actions taken by the constitutional authority in the conduct of U.S. international affairs."[110]

4. The court's holding contradicts China's understanding of its agreements with the U.S.

This Court has emphasized the need, in matters of foreign relations, to speak with a single voice.[111] With the court of appeals contradicting the president's one-China policy, the U.S. has spoken now with two voices – and China has reacted.

In a note to the Department of State, written while the appeal was pending, China protested the amicus contention that the U.S. has not recognized in China a power to bind Taiwan to the Warsaw Convention:

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[106] *Id.* at 812.

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] *Id.*

[111] Baker v. Carr, 369 U.S. at 211.

> This statement contradicts the principles enshrined in the 1979 Joint Communique on the Establishment of Diplomatic Relations between China and the United States, in which the United States government recognized the government of PRC as the sole legal government of China, and Taiwan as part of China. It also represents a breach of its own international commitments by the U.S. government. The Chinese government hereby firmly opposes such statement.[112]

China claimed that U.S. recognition of the PRC meant recognition that the PRC "represents the whole of China including Taiwan. Hence China's international commitments bind every part of China's territory."[113]

Besides contending that China's accession to the Warsaw Convention did not bind Taiwan, the amicus implied that the U.S. has never accorded that act any legal effect.[114] When notified of the accession, as the amicus explained, the Department of State replied: "Inasmuch as the Government of the United States of America recognizes the Government of the Republic of China as the only legal Government of China and does not recognize the so-called 'People's Republic of China,' it regards this action as being without legal effect."[115]

The court did not address the effect of such reasoning today. The logic that drove the U.S. to reject China's accession in 1959 would have compelled acceptance of it as soon as President Carter recognized the PRC as China's sole legal government.[116] China makes this point: "Even if the Convention failed to apply to China-U.S. relations, as the U.S. side argues, for lack of mutual diplomatic recognition before 1979, the establishment of diplomatic relations in 1979 should have

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[112] Chinese Embassy Note, *supra* note 38, at 1 (Pet. App. 101).

[113] *Id.* (Pet. App. 102).

[114] Amicus Brief, *supra* note 36, at 9.

[115] Dep't of State File # 399.72/7-359, *supra* note 8 (Pet. App. 74).

[116] Reply Brief, *supra* note 53, at 2-3.

had a legal consequence of activating mutual application of all international treaties between them."[117] In *Belmont*, this Court held that the effect of President Roosevelt's recognition of the USSR "was to validate, so far as this country is concerned, all acts of the Soviet government here involved from the commencement of its existence."[118]

Whether the U.S. denies the retroactive legal effect of China's accession the court of appeals does not say. But there was no evidence that the U.S., in recognizing China, took exception to China's accession for Taiwan. Under international law, when a state ratifies or accedes to a treaty with a reservation, any state that takes exception to the reservation must make known its exception or be bound by the reservation.[119] Though the U.S. recognized China more than 20 years ago, it has never objected to China's declaration that its accession applies to "the entire Chinese territory including Taiwan."[120] Presumably, the U.S. did not object because President Nixon secretly agreed the U.S. would not support Taiwan independence.[121]

Finally, China's *note verbale* "urge[d] the U.S. side to seriously reconsider its brief to the U.S. court which contains languages [*sic*] incompatible with its commitment to the 'One China Policy' and its legal obligations under international law, and take practical steps to fully respect China's

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[117] Chinese Embassy Note, *supra* note 38, at 2 (Pet. App. 102).

[118] United States v. Belmont, 301 U.S. at 330.

[119] Vienna Convention on the Law of Treaties, art. 21(3), U.N. Doc. A/CONF. 39/27 (1969), *reprinted in* 63 AM. J. INT'L L. 875 (1969). The U.S. has not ratified the Vienna Convention but regards it as stating the substantive international law of treaties. RESTATEMENT, *supra* note 63, pt. III, introd. note.

[120] 2 SHAWCROSS & BEAUMONT, *supra* note 5, at A 17, A 23 n.8.

[121] MANN, ABOUT FACE, *supra* note 64, at 46-49.

sovereignty and territorial integrity."[122] But the amicus maintained its position through oral argument of the appeal.[123]

The Shanghai Communiqué, agreed to by President Nixon in 1972, declared that the U.S. and China would respect each other's sovereignty and territorial integrity:

> [T]he two sides agreed that countries, regardless of their social systems, should conduct their relations on the principles of respect for the sovereignty and territorial integrity of all states, non-aggression against other states, non-interference in the internal affairs of other states, equality of mutual benefit, and peaceful coexistence. . . . The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.[124]

In the Shanghai Communiqué, the U.S. also agreed not to challenge the claim that Taiwan is part of China: "The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is part of China. The United States Government does not challenge that position."[125] In 1979, President Carter reaffirmed this in the Joint Communiqué.[126]

These commitments appear to justify an expectation that the U.S. would never take the position it urged in the court of appeals – that Taiwan is not part of China. According to one scholar who focuses on cross-Strait relations:

> To argue in 1999 that the Warsaw Convention does not apply to Taiwan – as the U.S. appears to do – is to challenge a position that in 1972 the U.S. said it

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[122] Chinese Embassy Note, *supra* note 38, at 2 (Pet. App. 102).

[123] Oral Argument Tape, *supra* note 53.

[124] Shanghai Communiqué, *supra* note 74, at 2 (Pet. App. 79-80).

[125] *Id.* at 3 (Pet. App. 81).

[126] Joint Communiqué, *supra* note 9, 1978 PUB. PAPERS: 2 JIMMY CARTER at 2264 (Pet. App. 83-84).

does not challenge. It is an argument that undermines the territorial integrity of the Chinese state, which the U.S. also pledged to respect.[127]

5. The court's decision deprives Taiwan of the benefits of the Warsaw Convention's international air regime.

The amicus hastened to protect Taiwan from the prospect of another decision – like the one in *Atlantic Mutual*[128] – that Taiwan is within the territory of China for purposes of the Warsaw Convention. But the amicus failed to consider whether it would serve Taiwan's interest to strip it – and the foreigners who trade and visit there – of the Convention's predictability and uniformity. This Court has explained the Convention's purpose of bringing uniformity to international air law.[129]

In fact, news of the court of appeals' decision created a furor in Taiwan, where the business community views the result as inimical to Taiwan's economic health. The ruling deprives the Taiwanese – and their American visitors and customers – of the most comprehensive international air regime. Taiwan's principal air carriers – China Airlines and EVA Airways – have routinely invoked the Convention when sued in U.S. courts.[130] This decision deprives them of the

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[127] Letter from Alan Wachman to petitioner's counsel of record, Aug. 10, 1999 (citing the Amicus Brief in this case). Professor Wachman teaches at the Fletcher School of Law and Diplomacy.

[128] Atlantic Mutual, 796 F. Supp. at 1191.

[129] El Al Israel Airlines, 525 U.S. at ___, 119 S. Ct. at 671-72.

[130] *See, e.g.*, China Airlines, Inc.'s motion for summary judgment, at 7:14-8:2 (asserting limitation of liability under Warsaw Convention), filed in First Ins. Co. v. China Airlines, Inc., No. CV-97-3731 JSL (RNBx) (C.D. Cal. 1997), Docket No. 98-15088 (9th Cir.), Excerpts of Record 54:14-55:2); General Denial of EVA Airways Corp. & Affirmative Defenses, ¶ 8, at 4-5, (asserting defenses under Warsaw Convention), filed Dec. 28, 1998, in Eagle Star President General Ins. Co. v. EVA Airways

commercial certainty and defenses afforded by the Convention. It ensures that U.S. courts will no longer apply the Warsaw Convention – or any amending treaty to which China may adhere – when deciding claims for cargo loss or damage or passenger death or injury arising during air transportation to and from Taiwan. The decision will have this effect because statehood is a prerequisite to membership in ICAO,[131] and only states may accede to the Convention.[132]

The formally-recognized Chinese government and the "people on Taiwan" with whom Americans have unofficial relations are united in opposing this result. The only interests served by the decision are those of a solitary all-cargo airline – UPS – that is unwilling to abide by the international limitation of liability set forth in the Convention. Everyone else – here and in China – loses by this decision.

The court's decree caused grave concern on Taiwan, where the Ministry of Foreign Affairs, on June 17, 1999, met with manufacturers, insurers, airlines, legal advisers, and academics to assess the commercial consequences of this decision. The meeting produced a consensus that Mingtai should ask this Court to review – and reverse – the judgment below.[133] Whatever good for Taiwan the proponents of two Chinas may have hoped, the result the amicus achieved is not pro- but anti-Taiwanese – and anti-Chinese.

Corp., Case No. 98K2258 (Municipal Court of the State of California, County of Los Angeles, Los Angeles District).

[131] Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, 15 U.N.T.S. 295 ("Chicago Convention"), art. 93 bis. *See* discussion of ICAO in text accompanying note 23 *supra*.

[132] 1 SHAWCROSS & BEAUMONT, *supra* note 23, § II(15)

[133] An early review by Georgetown Law Professor John R. Schmertz, Jr., also questions the decision: "The U.S. recognition of China (and the de-recognition of Taiwan) would arguably require the court to honor China's declaration." 5 INT'L L. UPDATE 62 (June 1999).

6. Summary of reasons for granting the petition.

a. Constitutional and legal reasons:

- The holding that the Taiwan Relations Act treats Taiwan as a foreign state contravenes the president's withdrawal of recognition from the ROC and his decision not to support Taiwan independence. The holding thus infringes the constitutional separation of powers.

- The holding that China's accession to the Warsaw Convention does not bind Taiwan contradicts the president's recognition of the PRC as China's sole legal government and his commitment not to challenge the Chinese position that Taiwan is part of China. This violates the political-question doctrine.

- The holding that China's accession does not bind Taiwan violates this Court's act-of-state doctrine, which prohibits judicial review of the act of a foreign sovereign within its own territory.

- The court's conclusion that the Warsaw Convention cannot apply to Taiwan unless the PRC has the power to bind Taiwan is incorrect. By its own terms, the Convention applies to flights to or from Taiwan because Taiwan is within the territory of China – a point on which China and the ROC agree.

b. Pragmatic reasons:

- China has formally protested the amicus position, claiming it violates the Shanghai Communiqué and China's rights as a sovereign.

- Taiwanese commercial interests oppose the decision because it deprives exporters, importers, airlines, passengers, and insurers of the legal uniformity and commercial certainty provided by the Warsaw Convention.

- The ROC's Ministry of Foreign Affairs has encouraged Mingtai to file this petition because it deems the decision deleterious to Taiwan's economic vitality. The Ministry

does not consider the case to present a "political" issue because the ROC does not dispute that Taiwan is part of China.

- Reversal of the court of appeals' decision is the only practical way to restore Taiwanese access to the Warsaw Convention. So long as the UN maintains that the PRC is the sole legitimate government of China, the ROC cannot accede to the Convention or any other treaty for which statehood is a requirement.

- The Chinese people should be left to work out their own destiny. Since China and Taiwanese interests alike call for the Warsaw Convention's application to Taiwan-U.S. air transportation, the federal judiciary should not impose a contrary result simply to benefit a private U.S. company.

For these constitutional, legal, and pragmatic reasons, Mingtai respectfully asks this Court to grant this petition and issue a writ of certiorari to the Ninth Circuit Court of Appeals.

Dated: August 23, 1999.

Respectfully submitted,

Michael W. Lodwick
of Porter, Groff & Lodwick
Counsel of Record for Petitioner

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MINGTAI FIRE & MARINE INSURANCE CO., LTD., a corporation, *Plaintiff-Appellant,* v. UNITED PARCEL SERVICE, a business entity; United Parcel International, Inc., a business entity, *Defendants-Appellees.*	No. 98-15088 D.C. No. CV-97-20211-JW OPINION

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Argued and Submitted
March 10, 1999 – San Francisco, California

Filed May 25, 1999

Before: Diarmuid F. O'Scannlain, Kim M. Wardlaw and William Fletcher, Circuit Judges.

Opinion by Judge O'Scannlain

OPINION

O'SCANNLAIN, Circuit Judge:

We must determine whether adherence to the Warsaw Convention by the People's Republic of China also binds Taiwan.

I

Mingtai Fire & Marine Insurance Co., Ltd. ("Mingtai"), insured a package, shipped by Gemtronics Corp. from Taipei, Taiwan to San Jose, California, which was lost en route by United Parcel Service, the air carrier. Mingtai alleged that the lost package contained computer chips worth $83,454.80 and brought suit against United Parcel Service and United Parcel International, Inc. (collectively "UPS"), in the Northern District of California alleging, *inter alia*, loss of cargo under the Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934), reprinted in note following 49 U.S.C.A. § 40105 (the "Warsaw Convention" or the "Convention").

UPS answered that the Convention did not apply, and that its air carrier liability was therefore limited to the $100 released value provided by the air waybill. Upon the parties' cross-motions for summary judgment, the district court so held, concluding that Taiwan, which is not a signatory to the Convention, was not bound by the People's Republic of China's ("China") adherence to the Convention. The district court therefore upheld the limitation on liability provided by the air waybill, and

entered summary judgment in Mingtai's favor in the amount of $100.

Mingtai appeals.[1]

II

The Convention only applies to shipments between territories of signatories, otherwise referred to as "High Contracting Parties." *See* Warsaw Convention, art. 1(2) (reprinted in note following 49 U.S.C.A. § 40105). The parties do not dispute that Taiwan is *not* a High Contracting Party, nor that China *is* a High Contracting Party. Thus, the sole question presented is whether China's status as a High Contracting Party is sufficient to bind Taiwan to the terms of the Convention.

China signed the Convention with the declaration that the Convention "shall of course apply to the entire Chinese territory including Taiwan." 2 Christopher N. Shawcross & Kenneth M. Beaumont, *Air Law* A17 (Peter Martin et al. eds., 4th ed. 1977) (1997 supplement). Mingtai's argument on appeal largely consists of the assertion that the United States' recognition of China and derecognition of Taiwan require this court to honor China's declaration that its adherence to the Convention binds Taiwan. The parties agree that the question of Taiwan's status, that is, whether derecognition rendered Taiwan bound by China's adherence to international agreements, is a question for the political branches, rather than the

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[1] Mingtai also brought state law claims for negligence which the district court held were preempted by federal law. Mingtai does not appeal that portion of the district court's ruling.

judiciary. The parties merely dispute what the political branches have determined Taiwan's status to be.

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A

The determination of whether China's adherence to the Convention binds Taiwan conflates two distinct areas of foreign relations: the effects of foreign sovereign recognition, and the status of treaties. It is axiomatic that "the conduct of foreign relations is committed by the Constitution to the political departments of the Federal Government; [and] that the propriety of the exercise of that power is not open to judicial review." *United States v. Pink*, 315 U.S. 203, 222-23 (1942); *accord Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918); *see also Taiwan v. United States Dist. Ct. for the N. Dist. of Cal.*, 128 F.3d 712, 718 (9th Cir. 1997) (recognizing "the 'primacy of the Executive in the conduct of foreign relations' and the Executive Branch's lead role in foreign policy") (quoting *First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767 (1972)). Thus, the Supreme Court has repeatedly held that the Constitution commits to the Executive Branch alone the authority to recognize, and to withdraw recognition from, foreign regimes. *See, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410 (1964) ("Political recognition is exclusively a function of the Executive."). "[R]ecognition of a foreign sovereign conclusively binds the courts," *Pink*, 315 U.S. at 223, because determining "[w]ho is the sovereign, *de jure* or *de facto*, of a territory is not a judicial, but a political question," *Jones v. United States*, 137 U.S. 202, 212 (1890). Thus, whether China is the sovereign, *de jure* or *de facto*, of the territory of Taiwan is a political question, and "[o]bjections to the underlying policy as well as objections to recognition are to be addressed to

the political department and not to the courts." *Pink*, 315 U.S. at 229.

Similarly, "governmental action . . . must be regarded as of controlling importance" in determining the status of treaties. *Baker v. Carr*, 369 U.S. 186, 212 (1962) (quoting *Terlinden v. Ames*, 184 U.S. 270, 285 (1902)); *see also Then v. Melendez*, 92 F.3d 851, 854 (9th Cir. 1996) (recognizing that whether a treaty remains in force after a change in the sovereign status of one of the signatories is a political question). Thus, courts answer questions regarding the status of treaties following a change in the sovereign status of one of the relevant entities by deferring to the political branches' understanding of the resulting obligations. *See id.* (deferring to the determination of the Executive Branch regarding the status of a treaty following Singapore's independence from the United Kingdom). For example, in *Clark v. Allen*, the Supreme Court considered whether a 1923 treaty with Germany remained in force following World War II, "since Germany, as a result of its defeat and the occupation by the Allies, [ ] ceased to exist as an independent national or international community." 331 U.S. 503, 514 (1947). Recognizing that this presented a political question, the Court simply considered whether the actions and statements of the "political departments" evinced an understanding that the treaty remained in force. *See id.* Similarly here, we look to the statements and actions of the "political departments" in order to answer whether, following recognition of China and derecognition of Taiwan, China's adherence to the Warsaw Convention binds Taiwan.

B

As this court has noted, "[w]hen the United States established relations with [China] in 1979, it severed diplomatic relations with Taiwan." *Taiwan v. United States Dist. Ct.*, 128 F.3d at 714.[2] However, the President's Memorandum effecting this change acknowledged that, despite the termination of diplomatic relations with Taiwan, the United States still wished to maintain "commercial, cultural and other relations with the people of Taiwan without official government representation and without diplomatic relations." *President's Memorandum for All Departments and Agencies: Relations With the People on Taiwan*, reprinted in 1979 U.S.C.C.A.N. 36, 75. Thus, the President's Memorandum directed that "[e]xisting international agreements and arrangements in force between the United States and Taiwan shall continue in force. . . . " *Id.*

Congress, in turn, formalized this continuing relationship by enacting the Taiwan Relations Act, 22 U.S.C. §§ 3301-3316 ("Act"), "to provide a structure for 'the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.' " *Taiwan v. United States Dist. Ct.*, 128 F.3d at 714 (quoting 22 U.S.C. § 3301(a)(2)). The Act provides that:

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[2] The history of the prior relations between the United States, China, and Taiwan has been exhaustively summarized elsewhere. *See, e.g., New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc.*, 954 F.2d 847, 849-50 (2d Cir. 1992); Tzu-Wen Lee, *The International Legal Status of the Republic of China on Taiwan*, 1 UCLA J. Int'l L. & Foreign Aff. 351, 353-354 (1997).

> [t]he absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to [derecognition].

22 U.S.C. § 3303(a).

The Act further provides that "[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan," 22 U.S.C. § 3303(b)(1), and that:

> [f]or all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979. . . .

22 U.S.C. § 3303(c).

These provisions, and the Act generally, strongly imply that, despite the absence of official relations, the United States continues to deal separately with Taiwan. With the passage of the Act, the United States not only continued in force its treaties with Taiwan that antedated derecognition; it also gave no indication that existing or future agreements with the newly recognized China would be binding upon Taiwan.

The State Department's publication *Treaties in Force* makes explicit what is implicit in the Act. *Treaties in Force*

contains sections listing bilateral treaties with various countries. *See* U.S. Dep't of State, *Treaties in Force* iii-iv (1997). There are separate sections listing the bilateral treaties between (1) the United States and "China" and (2) the United States and "China (Taiwan)". *See id.* These sections list numerous treaties in force between the United States and "China" that are not listed as treaties in force between the United States and "China (Taiwan)". For example, under "Atomic Energy," the "China" section lists only the "Protocol on cooperation in nuclear safety matters"; under "Atomic Energy," the "China (Taiwan)" section lists only the "Agreement for cooperation concerning civil uses of atomic energy." *See id.* at 52, 315.

More specific to the question presented here, "China" is listed as a signatory to the Warsaw Convention, while "China (Taiwan)" is not. *See id.* at 329-30. This listing of "China" does not appear to encompass Taiwan, because (as noted previously) where both China and Taiwan are signatories to a treaty, *Treaties in Force* so indicates. For example, "China" is listed as a signatory to a different aviation treaty – the "Convention on offenses and certain other acts committed on board aircraft." *See id.* at 331. A note to the "China" listing for that treaty states that "[t]he Taiwan authorities have also adhered to this convention." *Id.* at 332. There would be little reason to note Taiwan's adherence if the Executive considered China's adherence to a treaty binding upon Taiwan.

We need not, however, merely rely upon the implications of the Act and the statements in and structure of *Treaties in Force*. Instead, we have the benefit of the Executive's express position on the issue presented. In an amicus brief and at oral argument, the United States

made plain its position that China's adherence to the Convention does not bind Taiwan. In *Taiwan v. United States District Court*, we were similarly presented with a question concerning Taiwan's status, regarding which the United States filed a brief as amicus curiae. *See* 128 F.3d at 718. We noted that the United States' position was "entitled to substantial deference in light of the 'primacy of the Executive in the conduct of foreign relations' and the Executive Branch's lead role in foreign policy," and thus held in accordance with that position. *Id.* (quoting *First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767 (1972)). Similarly here, the United States' position is entitled to deference.

While Mingtai argues that the district court violated separation of powers by rejecting its position, it instead would be an intrusion into the political sphere for this court to rule in Mingtai's favor and effectively to hold, contrary to every indication of executive and legislative intent, that Taiwan has tacitly been recognized by the United States as a party to any treaty signed by China. We will not do so. We caution, however, that we do not independently determine the status of Taiwan; instead, we merely recognize and defer to the political departments' position that Taiwan is not bound by China's adherence to the Warsaw Convention.[3]

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[3] Having done so, we deny UPS's Motion to Strike Plaintiff-Appellant's Request for Judicial Notice as moot.

III

For the foregoing reasons, the Warsaw Convention does not apply to the lost air cargo in this case and the district court properly upheld the limitation of liability in the air waybill.

AFFIRMED.

APPENDIX B

FOR PUBLICATION

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MINGTAI FIRE & MARINE INSURANCE CO., Plaintiff, v. UNITED PARCEL SERVICE INC. AND UNITED PARCEL SERVICE INTERNATIONAL, INC., Defendants.	NO. C-97-20211-JW ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING IN PART AND GRANTING IN PART PLAINTIFF'S COUNTER-MOTION FOR SUMMARY JUDGMENT [Filed Dec. 12, '97]

I. INTRODUCTION

Before the Court is Defendants, United Parcel Service, Inc. and United Parcel Service International, Inc.'s, (collectively, "UPS") motion for summary judgment on the ground that the Warsaw Convention does not govern shipments from Taiwan. Upon review of the applicable law, the Court grants Defendants' motion. The Court also heard Plaintiff, Mingtai Fire & Marine Insurance Co.'s, ("Mingtai") counter-motion for summary judgment on this same issue, as well as Plaintiff's breach of contract claim. The Court grants summary judgment in favor of Mingtai on the breach of contract claim in the amount of $100.

II. BACKGROUND

On March 10, 1995, UPS issued an air waybill numbered 819-089, signed by Grace Shih, on behalf of Gemtronics Corp., located in Taipei, Taiwan, for a shipment of cargo from Taipei to Commax Technologies in San Jose, California. Mingtai, the subrogated underwriter for the cargo, alleges that, while in UPS' custody, the shipment was lost or stolen, and was never delivered to Commax Technologies.

Mingtai contends that the Warsaw Convention applies to this case and asserts a claim for loss of cargo under the Warsaw Convention, as well as state law claims for negligence, breach of contract, and breach of duty to care for property in bailment.

UPS now moves for summary judgment on the grounds that the Warsaw Convention does not apply to shipments from Taiwan because Taiwan is not a signatory to the Convention and that federal law preempts Mingtai's state law claims. Mingtai responded with a countermotion for summary judgment on the grounds that the Warsaw Convention does apply because the People's Republic of China ("PRC") is the true China, and thus, Taiwan is bound by the PRC's signing of the Convention and on the ground that the Warsaw Convention does not preempt its state law claims.

III. DISCUSSION

A. Standard of Review

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The purpose of summary judgment "is to isolate and dispose of factually unsupported claims or defenses." Celotex v. Catrett, 477 U.S. 317, 323-324 (1986).

The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' which it believes demonstrate the absence of a genuine issue of material fact." Id. at 323. If he meets this burden, the moving party is then entitled to judgment as a matter of law when the non-moving party fails to make a sufficient showing on an essential element of his case with respect to which he bears the burden of proof at trial. Id. at 322-23.

The non-moving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The non-moving party cannot defeat the moving party's properly supported motion for summary judgment simply by alleging some factual dispute between the parties. To preclude the entry of summary judgment, the non-moving party must bring forth material facts, i.e., "facts that might affect the outcome of the suit under the governing law . . . Factual disputes that are irrelevant or unnecessary will not be counted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The opposing party "must do more than simply show that there is some metaphysical doubt as to the material

facts." Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 588 (1986).

The court must draw all reasonable inferences in favor of the non-moving party, including questions of credibility and of the weight to be accorded particular evidence. Masson v. New Yorker Magazine, Inc., 111 S.Ct. 2419, 2434-35 (1991) (citing Anderson, 477 U.S. at 255); Matsushita Elec. Indus. Co. v. Zenith Radio, 475 U.S. 574, 588 (1986); T.W. Elec. Service v. Pacific Elec. Contractors, 809 F.2d 626, 630 (9th Cir. 1987). It is the court's responsibility "to determine whether the 'specific facts' set forth by the nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence." T.W. Elec. Service, 808 F.2d at 631. "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. However, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.' " Matsushita, 475 U.S. at 587.

B. The Warsaw Convention Does Not Apply To This Case

1. Taiwan is not a signatory to the Warsaw Convention

The Warsaw Convention governs the rights and responsibilities of carriers with respect to the international transportation of goods. See, Warsaw Convention,

Preface. The Convention applies solely to transportation between the territories of two "High Contracting Parties" or between two points within the territory of one High Contracting Party with a stopover in another country. The United States is a High Contracting Party to the Convention. The PRC, the controlling government of mainland China, is also a High Contracting Party. However, Taiwan is not a signatory to the Warsaw Convention. See In re Schwinn Bicycle Company v. AFS Cycle & Company, Ltd., 190 B.R. 599 (1995). Thus, unless Taiwan is bound by the PRC's signing, the Convention does not apply to goods shipped from Taiwan.

2. Taiwan is not bound by the PRC's signing of the Convention

Mingtai contends that Taiwan is bound to the Warsaw Convention because the PRC is a signatory. Mingtai further contends that this Court cannot make a determination that Taiwan is not bound by the PRC because that is a political question, which this Court has no authority to decide. (Mingtai's Opposition, pp. 9-11.)

After the United States derecognized the Republic of China ("ROC") as the official government of China on December 30, 1978, and formally recognized the PRC as the government of China, the United States passed the Taiwan Relations Act, ("TRA"). 22 U.S.C. §§ 3301, et seq. The TRA was designed to encourage the continuation of "commercial, cultural, and other relations between the

people of the United States and the people on Taiwan."[1] 22 U.S.C. § 3301(b)(1). The TRA permitted the United States to maintain relations with Taiwan, although it could not continue full diplomatic recognition, because of its recognition of the PRC. See 22 U.S.C. § 3303. The TRA provides that "[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. § 3303(b)(1). The TRA also provides for the continuing effect of the treaties and international agreements entered into between the United States and Taiwan prior to the recognition of the PRC as the official China. 22 U.S.C. § 3303(c). Thus, Congress has demonstrated its intent to consider Taiwan separate from the PRC.

The Ninth Circuit has stated that Taiwan is a "foreign state." Taiwan v. United States Dist. Court for the Northern Dist. of Cal., 97 Daily Journal D.A.R. 12, 977, 12978 (9th Cir. 1997). In Taiwan, the Ninth Circuit Court of Appeals considered the issue of "testimonial immunity accorded to employees of the Taipei Economic and Cultural Representative Office (TECRO) under the Taiwan Relations Act. . . . " Id. The Court of Appeals described TECRO as the " 'instrumentality on behalf of the people on Taiwan. . . . which performs functions similar to the functions performed by embassies of countries with

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[1] Mingtai contends that the use of the phrase "people on Taiwan" implies that the TRA was meant to be a geographical reference rather than a political reference, but provides no authority for the basis of its narrow interpretation of one phrase to imply that Taiwan is bound by acts of the PRC.

whom the United States maintains diplomatic relations." Id. The Court of Appeals found that, "[a]lthough the United States does not maintain diplomatic relations with Taiwan, Taiwan is a 'foreign state,' within the meaning of the [Foreign Sovereign Immunities Act]." Id. (citing to 22 U.S.C. § 3303(b)(1) 1994.) (The TRA).

The United States government has recognized the PRC's claim to Taiwan, but has not acceded to that claim. The issue of which government represents Taiwan remains diplomatically unsettled, and this Court cannot hold that Taiwan is bound by China's singing [sic] of the Warsaw Convention. To so conclude would require this Court to make a political decision, in that it would require this Court to decide what government ruled Taiwan. See United States v. Pink, 315 U.S. 203, 229 (1942) (holding that the question of what government represents a foreign state is a decision that must be determined by the Executive Branch and is beyond the realm of judicial review.)

This Court finds support for its decision in In re Schwinn, supra, 190 B.R. 599, which addressed a similar issue. In In re Schwinn, the Bankruptcy Court had to determine whether the Hague Service Convention, 20 U.S.T. 361, permitted service of process on a defendant in Taiwan. Id. at p. 611. Defendants argued that "Taiwan is a part of the . . . PRC, and because the PRC is a signatory of the Hague Service Convention, service on a Taiwanese defendant must be made under the Hague Service Convention." Id. The Court disagreed, concluding that under the TRA, Taiwan is not bound by the PRC's signing of the Hague Service Convention, and the Convention does not apply to Taiwan. The Court further held that the TRA

"continued viability of earlier treaties with Taiwan and just as clearly omitted application to Taiwan of other treaties between the United States and the PRC, thereby excluding the Hague Service Convention." Id. Mingtai attempts to distinguish the decision in In re Schwinn, but this Court finds Mingtai's arguments unpersuasive.

Mingtai attempts to distinguish In re Schwinn on the grounds that the decision is not binding and that the court had no basis for its conclusion that the United States did not apply treaties to Taiwan that it made with the PRC. This Court is aware that the decision is not binding, but finds the reasoning persuasive. The decision was well-reasoned and supported by law. It relied in part upon Wong v. Ilchert, 998 F.2d 661, 663 (9th Cir. 1993) for the proposition that "recognition of mainland China and derecognition of Taiwan has not had the effect in any legal or practical sense of accepting the PRC's territorial claim to Taiwan." Id. at p. 612.

Mingtai further attempts to avoid the entry of summary judgment by relying on Atlantic Mutual Ins. Co. v. Northwest Airlines, Inc., 796 F. Supp. 1188 (E.D. Wis. 1992) in which the Court concluded that Taiwan is part of the PRC. In Atlantic Mutual, the plaintiff brought a cause of action for negligence when cargo was damaged during air transport from the United States to Taiwan. Id. at p. 1189. The Atlantic Mutual court concluded that Taiwan was a party to the Warsaw Convention because the PRC was a signatory.[2]

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[2] After entry of summary judgment, the parties settled, and the Court of Appeals declined to address the merits of the case

The Court finds that the conclusion in Atlantic Mutual, however, is flawed in that it makes an absolute statement that recognition of mainland China means that the United States recognizes China's territorial claim to Taiwan, a decision better left to the Executive Branch. Because Taiwan is not bound by the PRC's signing of the Warsaw Convention, the Warsaw Convention is not applicable to this claim. Therefore, Mingtai has no claim under the Warsaw Convention, and UPS' Motion For Summary Judgment on this claim is granted.

C. Federal Law preempts Mingtai's state claims

UPS also moves for summary judgment on the basis that federal law preempts Mingtai's state claims for negligence, breach of contract, and breach of duty to care for property in bailment pursuant to 49 U.S.C. § 41713(b)(4). (Complaint ¶¶ 7, 16, 19, 25.) Mingtai apparently misunderstood the argument, and responded that the Warsaw Convention did not preempt state claims.[3]

UPS argues that the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), Pub. L. No. 103-305, Title VI, § 601, 108 Stat. 1605 (codified at 49 U.S.C. § 41713(b)(4)(1997) preempts state claims related to the "price, route, or service of an air carrier." See 49 U.S.C. § 41713)(b)(4).

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when a third party attempted to intervene after settlement. Atlantic Mutual Ins. Co. V. Northwest Airlines, Inc., 24 F.3d 958 (7th Cir. 1994).

[3] Mingtai's response is moot because this Court finds that the Warsaw Convention does not apply to this claim.

The courts have routinely held that the FAAAA preempts state actions against carriers regarding prices or services, and this Court adopts the reasoning found in these cases. See Deerskin Trading Post, Inc. V. United Parcel Serv. of Am., Inc., No. 1:96-CV-1346-FMH, 1997 U.S. Dist. LEXIS 5361, at *4-7 (N.D. Ga. Mar. 20, 1997) (holding that FAAAA preempts breach of contract claim for injunctive relief); Deerskin Trading Post, Inc. V. United Parcel Serv. of Am., Inc., 972 F. Supp. 665 (N.D. Ga. 1997); Western Parcel Express v. United Parcel Serv., Inc., No. C-96-1526 CAL, 196 U.S. Dist. LEXIS 18138, at *4-5, 8 (N.D. Cal. Dec. 3, 1996) (dismissing state-law claims as preempted); Vieira v. United Parcel Serv. Inc., No. C-95-04697 CA: ARB, 1996 U.S. Dist. LEXIS 11223, at *2-3 (N.D. Cal. Aug. 5, 1996) (holding state law claims for negligence, conversion and breach of contract preempted by FAAAA because claims relate to "price, route, or service"); Rowe v. United Parcel Serv., Inc, No. CV-S-96-457-PMP (RLH), 1996 U.S. Dist. LEXIS 11266, at *1-2 (D. Nev. July 31, 1996) (holding state law claims for intentional infliction of emotional distress, negligent infliction of emotional distress, and defamation preempted by FAAAA as relating to the "price, route, or service"); Carsten v. United Parcel Serv., Inc., No. S-95-862 WBS/JFM, 1996 U.S. Dist. LEXIS 5798, at *11-14 (E.D. Cal. Mar. 19, 1996); United Parcel Serv., Inc. V. Benz, No. C-95-1900-VRW, slip. Op. At 14, 15 (N.D. Cal. Mar. 1, 1996).

Moreover, Congress intended to give the FAAAA the same "broad preemption interpretation" as that of the Airline Deregulation Act ("ADA"), 49 U.S.C. § 41713(b)(1)-(3), as found in Morales v. TransWorld Airlines, 504 U.S. 374 (1992). H.R. Conf. Rep. No. 103-677, at

83 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1755. In Morales, the Supreme Court held that the ADA preempted state actions having "a connection with or reference to . . . 'rates, routes, or services.' " Id. at p. 384. The Supreme Court interpreted the ADA as preempting all causes of action relating to an airline's rates, routes, or services except for routine breach of contract actions with no enlargement or enhancement based on state law. See, American Airlines, Inc. v. Wolens, 115 S.Ct. 817, 826 (1995). The language of the FAAAA's preemption provisions is nearly identical to the preemption section of the ADA. The ADA preempts causes of actions relating to "rates, routes, or services" and the FAAAA preempts state actions effecting "price, route, or service of an air carrier."

Mingtai brought claims for tortious misconduct under California state law for alleged injury arising from UPS' handling of cargo while in transport. These claims arise from or relate to UPS' "price, route, or service." See e.g., Vieira, 1996 U.S. Dist. LEXIS 11223 (The court granted summary judgment on the basis of preemption where plaintiff sued defendant, United Parcel Service, for loss of cargo under state law claims for negligence, conversion, and breach of contract because the FAAAA "preclude[s] the enactment or enforcement of state laws related to the 'price, route, or service' of motor carriers . . . such as UPS.") Thus, the FAAAA preempts Mingtai's state law causes of action for negligence and breach of duty to care for property in bailment arising from and relating to UPS' services (Complaint ¶¶ 7, 16, 25.).

Mingtai has also brought a state law cause of action based on breach of contract. The Supreme Court provided an exception to the ADA preemption for routine breach

of contract claims in American Airlines, Inc. v. Wolens, 115 S.Ct. 817, 820, 823-24 (1995). This Court applies the Supreme Court's interpretation of the exception to the ADA with regard to the FAAAA. This Court finds that the issue of breach of contract does not arise from or relate to "price, route, or service." Thus the FAAAA, like the ADA, does not preempt such state claim. Further, Mingtai's breach of contract claim does not involve enhancements or enlargements, which would permit preemption, by taking the claim out of the narrow exception as described in Wolens. The Court additionally finds, however, that the contract, on its face, limits UPS' liability for breach of contract damages to $100. The Court hereby enters summary judgment in favor of Mingtai and awards Mingtai $100 on its claim for breach of contract.

IV. CONCLUSION

For the reasons set forth above, the Court grants UPS' Motion For Summary Judgment as to Mingtai's Warsaw Convention Claim, as well as its claims for negligence and breach of duty for property in bailment. The Court denies UPS' Motion For Summary Judgment as to Mingtai's breach of contract claim. The Court further denies Mingtai's Countermotion for Summary Judgment as to application of the Warsaw Convention, but grants summary judgment in favor of Mingtai on its claim of breach of contract in the amount of $100.

DATED: December 10, 1997

/s/ James Ware
JAMES WARE
United States District Judge

APPENDIX C

WARSAW CONVENTION

49 Stat. 3000; TS 876

Convention for the Unification of Certain Rules Relating to International Transportation by Air

The President of the German Reich, the Federal President of the Republic of Austria, His Majesty the King of the Belgians, the President of the United States of Brazil, His Majesty the King of the Bulgarians, the President of the Nationalist Government of China, His Majesty the King of Denmark and Iceland, His Majesty the King of Egypt, His Majesty the King of Spain, the Chief of State of the Republic of Estonia, the President of the Republic of Finland, the President of the French Republic, His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, the President of the Hellenic Republic, His Most Serene Highness the Regent of the Kingdom of Hungary, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Latvia, Her Royal Highness the Grand Duchess of Luxemburg, the President of the United Mexican States, His Majesty the King of Norway, Her Majesty the Queen of the Netherlands, the President of the Republic of Poland, His Majesty the King of Rumania, His Majesty the King of Sweden, the Swiss Federal Council, the President of the Czechoslovak Republic, the Central Executive Committee of the Union of Soviet Socialist Republics, the President of the United States of Venezuela, His Majesty the King of Yugoslavia:

Having recognized the advantage of regulating in a uniform manner the conditions of international transportation by air in respect of the documents used for such transportation and of the liability of the carrier,

Have nominated to this end their respective Plenipotentiaries, who being thereto duly authorized, have concluded and signed the following convention:

Chapter I. Scope – Definitions

Article 1

(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise.

(2) For the purpose of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party shall not be deemed to be international for the purposes of this convention.

(3) Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party.

Article 2

(1) This convention shall apply to transportation performed by the state or by legal entities constituted under public law provided it falls within the conditions laid down in article 1.

(2) This convention shall not apply to transportation performed under the terms of any international postal convention.

Chapter II. Transportation Documents

SECTION I. PASSENGER TICKET

Article 3

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the carrier or carriers;

(*e*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability.

SECTION II. BAGGAGE CHECK

Article 4

(1) For the transportation of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The name and address of the carrier or carriers;

(*d*) The number of the passenger ticket;

(*e*) A statement that delivery of the baggage will be made to the bearer of the baggage check;

(*f*) The number and weight of the packages;

(*g*) The amount of the value declared in accordance with article 22(2);

(*h*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(4) The absence, irregularity, or loss of the baggage check shall not affect the existence or the validity of the contract of transportation which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at (*d*), (*f*), and (*h*) above, the carrier shall not be entitled to avail himself of those provisions of the convention which exclude or limit his liability.

SECTION III. AIR WAYBILL

Article 5

(1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an "air waybill": every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity, or loss of this document shall not affect the existence or the validity of the contract of transportation which shall, subject to the provisions of article 9, be none the less governed by the rules of this convention.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the goods.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(3) The carrier shall sign on acceptance of the goods.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

The carrier of goods has the right to require the consignor to make out separate waybills when there is more than one package.

Article 8

The air waybill shall contain the following particulars:

(*a*) The place and date of its execution;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the consignor;

(*e*) The name and address of the first carrier;

(*f*) The name and address of the consignee, if the case so requires;

(*g*) The nature of the goods;

(*h*) The number of packages, the method of packing, and the particular marks or numbers upon them;

(*i*) The weight, the quantity, the volume, or dimensions of the goods;

(*j*) The apparent condition of the goods and of the packing;

(*k*) The freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

(*l*) If the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;

(*m*) The amount of the value declared in accordance with article 22(2);

(*n*) The number of parts of the air waybill;

(*o*) The documents handed to the carrier to accompany the air waybill;

(*p*) The time fixed for the completion of the transportation and a brief note of the route to be followed, if these matters have been agreed upon;

(*q*) A statement that the transportation is subject to the rules relating to liability established by this convention.

Article 9

If the carrier accepts goods without an air waybill having been made out, or if the air waybill does not contain all the particulars set out in article 8(*a*) to (*i*), inclusive, and (*q*), the carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability.

Article 10

(1) The consignor shall be responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air waybill.

(2) The consignor shall be liable for all damages suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

(1) The air waybill shall be *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of transportation.

(2) The statements in the air waybill relating to the weight, dimensions, and packing of the goods, as well as those relating to the number of packages, shall be *prima facie* evidence of the facts stated; those relating to the quantity, volume, and condition of the goods shall not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of transportation, the consignor shall have the right to dispose of the goods by withdrawing them at the airport of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of

destination, or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring them to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors, and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor shall cease at the moment when that of the consignee begins in accordance with article 13, below. Nevertheless, if the consignee declines to accept the waybill or the goods, or if he cannot be communicated with, the consignor shall resume his right of disposition.

Article 13

(1) Except in the circumstances set out in the preceding article, the consignee shall be entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the goods to him, on payment of the charges due and on

complying with the conditions of transportation set out in the air waybill.

(2) Unless it is otherwise agreed, it shall be the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee shall be entitled to put into force against the carrier the rights which flow from the contract of transportation

Article 14

The consignor and the consignee can respectively enforce all the rights given them by articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

Article 15

(1) Articles 12, 13, and 14 shall not affect either the relations of the consignor and the consignee with each other or the relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of articles 12, 13, and 14 can only be varied by express provision in the air waybill.

Article 16

(1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi, or police before the goods can be delivered to the consignee. The consignor shall be liable to the carrier for any damage occasioned by the absence, insufficiency, or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III. Liability of the Carrier

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods.

Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other

respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65 1/2 milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Article 26

(1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation.

(2) In case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within 3 days from the date of receipt in the case of baggage and 7 days from the date of receipt in the case of goods. In case of delay the complaint must be made at the latest within 14 days from the date on which the baggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

(2) Questions of procedure shall be governed by the law of the court to which the case is submitted.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Article 30

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV. Provisions Relating to Combined Transportation

Article 31

(1) In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

(2) Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air.

Chapter V. General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28.

Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of transportation or from making regulations which do not conflict with the provisions of this convention.

Article 34

This convention shall not apply to international transportation by air performed by way of experimental trial by air navigation enterprises with the view to the establishment of regular lines of air navigation, nor shall it apply to transportation performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this convention means current days, not working days.

Article 36

This convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

(1) This convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which shall give notice of the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties which shall have ratified and the High Contracting Party which deposits its instrument of ratification on the ninetieth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify the Government of each of the High Contracting Parties of the date on which this convention comes into force as well as the date of the deposit of each ratification.

Article 38

(1) This convention shall, after it has come into force, remain open for adherence by any state.

(2) The adherence shall be effected by a notification addressed to the Government of the Republic of Poland, which shall inform the Government of each of the High Contracting Parties thereof.

(3) The adherence shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

(1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the party which shall have proceeded to denunciation.

Article 40

(1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of adherence, declare that the acceptance which it gives to this convention does not apply to all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or its authority, or any other territory under its suzerainty.

(2) Accordingly any High Contracting Party may subsequently adhere separately in the name of all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority or any other territory under its suzerainty which have been thus excluded by its original declaration.

(3) Any High Contracting Party may denounce this convention, in accordance with its provisions, separately or for all or any of its colonies, protectorates, territories

under mandate, or any other territory subject to its sovereignty or to its authority, or any other territory under its suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This convention, done at Warsaw on October 12, 1929, shall remain open for signature until January 31, 1930.

ORDER OF CIVIL AERONAUTICS BOARD APPROVING INCREASES IN LIABILITY LIMITATIONS OF WARSAW CONVENTION AND HAGUE PROTOCOL.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of May 1966.

The Convention for the Unification of Certain Rules Relating to International Transportation by Air, generally known as the Warsaw Convention, creates a uniform body of law with respect to the rights and responsibilities of passengers, shippers, and air carriers in international air transportation. The United States became a party to the Convention in 1934, and eventually over 90 countries likewise became parties to the Convention. [The Convention was amended by the Protocol signed at Hague in

1955 which has never been ratified by the United States. The Convention (subject to certain provisions) limits carriers' liability for death or injury to passengers in international transportation to 125,000 gold francs, or approximately $8,300. The Protocol, subject to certain provisions, provides for liability limitations of approximately $16,600.] On November 15, 1965, the U.S. Government gave notice of denunciation of the Convention, emphasizing that such action was solely because of the Convention's low limits of liability for personal injury or death to passengers. Pursuant to Article 39 of the Convention this notice would become effective upon 6 months' notice, in this case, May 15, 1966. Subsequently, the International Air Transport Association (IATA) made efforts to effect an arrangement among air carriers, foreign air carriers, and other carriers (including carriers not members of IATA) providing the major portions of international air carriage to and from the United States to increase the limitations of liability now applicable to claims for personal injury and death under the Convention and the Protocol. The purpose of such action is to provide a basis upon which the United States could withdraw its notice of denunciation.

The arrangement proposed has been embodied in an agreement (Agreement CAB 18900) between various air carriers, foreign air carriers, and other carriers which has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 and Part 261 of the Board's economic regulations and assigned the above designated CAB number.

By this agreement, the parties thereto bind themselves to include in their tariffs, effective May 16, 1966, a

special contract in accordance with Article 22(1) of the Convention or the Protocol providing for a limit of liability for each passenger for death, wounding, or other bodily injury of $75,000 inclusive of legal fees, and, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, a limit of $58,000 exclusive of legal fees and costs. These limitations shall be applicable to international transportation by the carrier as defined in the Convention or Protocol which includes a point in the United States as a point of origin, point of destination, or agreed stopping place. The parties further agree to provide in their tariffs that the Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20(1) of the Convention or the Convention as amended by the Protocol. The tariff provisions would stipulate, however, that nothing therein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which results in death, wounding, or other bodily injury of a passenger.

The carriers by the agreement further stipulate that they will, at time of delivery of the tickets, furnish to each passenger governed by the Convention or the Protocol and by the special contract described above, a notice in 10 point type advising international passengers of the limitations of liability established by the Convention or the Protocol, or the higher liability agreed to by the special contracts pursuant to the Convention or Protocol as described above. The agreement is to become effective upon approval by this Board, and any carrier may

become a party to it by signing a counterpart thereof and depositing it with the Board. Withdrawal from the agreement may be effected by giving 12 months' written notice to the Board and the other Carrier parties thereto.

As indicated, the decision of the U.S. Government to serve notice to denounce the Convention was predicated upon the low liability limits therein for personal injury and death. The Government announced, however, that it would be prepared to withdraw the Notice of Denunciation if, prior to its effective date, there is a reasonable prospect for international agreement on limits of liability for international transportation in the area of $100,000 per passenger or on uniform rules without any limit of liability, and if pending such international agreement there is a provisional arrangement among the principal international air carriers providing for liability up to $75,000 per passenger.

Steps, [sic] have been taken by the signing carriers to have tariffs become effective May 16, 1966, upon approval of this agreement, which will increase by special contract their liability for personal injury or death as described herein. The signatory carriers provide by far the greater portion of international transportation to, from, and within the United States. The agreement will result in a salutory increase in the protection given to passengers from the increased liability amounts and the waiver of defenses under Article 20(1) of the Convention or Protocol. The U.S. Government has concluded that such arrangements warrant withdrawal of the Notice of Denunciation of the Warsaw Convention. Implementation of the agreement will permit continued adherence to the Convention with the benefits to be derived therefrom, but

without the imposition of the low liability limits therein contained upon most international travel involving travel to or from the United States. The stipulation that no tariff provision shall be deemed to affect the rights and liabilities of the carrier with regard to any claim brought by, on behalf of, or in respect of any person who has willfully caused damage which results in death, wounding or other bodily injury of a passenger operates to diminish any incentive for sabotage.

Upon consideration of the agreement, and of matters relating thereto of which the Board takes notice, the Board does not find that the agreement is adverse to the public interest or in violation of the Act and it will be approved.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly sections 102, 204(a), and 412 thereof:

It is ordered, That: 1. Agreement CAB 18900 is approved.

APPENDIX D

TAIWAN RELATIONS ACT

22 U.S.C. §§ 3301-3316

CHAPTER 48 – TAIWAN RELATIONS

Sec.

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§ 3301. Congressional findings and declaration of policy

(a) Findings

The President having terminated governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as

the Republic of China prior to January 1, 1979, the Congress finds that the enactment of this chapter is necessary –

(1) to help maintain peace, security, and stability in the Western Pacific; and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.

(b) Policy

It is the policy of the United States –

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United States and are matters of international concern;

(3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

(c) Human rights

Nothing contained in this chapter shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.

(Pub. L. 96-8, § 2, Apr. 10, 1979, 93 Stat. 14.)

§ 3302. Implementation of United States policy with regard to Taiwan

(a) Defense articles and services

In furtherance of the policy set forth in section 3301 of this title, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

(b) Determination of Taiwan's defense needs

The President and the Congress shall determine the nature and quantity of such defense articles and services

based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan's defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

(c) United States response to threats to Taiwan or dangers to United States interests

The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

(Pub. L. 96-8, § 3, Apr. 10, 1979, 93 Stat. 15.)

§ 3303. Application to Taiwan of laws and international agreements

(a) Application of United States laws generally

The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

(b) Application of United States laws in specific and enumerated areas

The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 3305 of this title, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's

Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible and intangible, and other things of value, owned or held on or prior to December 31, 1978, or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this chapter, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 [42 U.S.C.A. § 2011 et seq.] and the Nuclear Non-Proliferation Act of 1978 [22 U.S.C.A. § 3201 et seq.], to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], Taiwan may be treated in the manner specified in the first sentence of section 202(b) of that Act [8 U.S.C.A. § 1152(b)].

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be

abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) Treaties and other international agreements

For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Membership in international financial institutions and other international organizations

Nothing in this chapter may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

(Pub. L. 96-8, § 4, Apr. 10, 1979, 93 Stat. 15.)

§ 3304. Overseas Private Investment Corporation

(a) Removal of per capita income restriction on Corporation activities with respect to investment projects on Taiwan

During the three-year period beginning on April 10, 1979, the $1,000 per capita income restriction in clause (2) of the second undesignated paragraph of section 2191 of this title shall not restrict the activities of the Overseas Private Investment Corporation in determining whether to provide any insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan.

(b) Application by Corporation of other criteria

Except as provided in subsection (a) of this section, in issuing insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan, the Overseas Private Insurance[1] Corporation shall apply the same criteria as those applicable in other parts of the world.

(Pub. L. 96-8, § 5, Apr. 10, 1979, 93 Stat. 16.)

§ 3305. The American Institute in Taiwan

(a) Conduct of programs, transactions, or other relations with respect to Taiwan

Programs, transactions, and other relations conducted or carried out by the President or any agency of the United States Government with respect to Taiwan

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[1] So in original. Probably should be "Investment".

shall, in the manner and to the extent directed by the President, be conducted and carried out by or through –

(1) The[1] American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia, or

(2) such comparable successor nongovernmental entity as the President may designate,

(hereafter in this chapter referred to as the "Institute").

(b) Agreements or transactions relative to Taiwan entered into, performed, and enforced

Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to enter into, perform, enforce, or have in force an agreement or transaction relative to Taiwan, such agreement or transaction shall be entered into, performed, and enforced, in the manner and to the extent directed by the President, by or through the Institute.

(c) Preemption of laws, rules, regulations, or ordinances of District of Columbia, States, or political subdivisions of States

To the extent that any law, rule, regulation, or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Institute is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the

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[1] So in original. Probably should be "the".

Institute pursuant to this chapter, such law, rule, regulation, or ordinance shall be deemed to be preempted by this chapter.

(Pub. L. 96-8, § 6, Apr. 10, 1979, 93 Stat. 17.)

§ 3306. Services to United States citizens on Taiwan

(a) Authorized services

The Institute may authorize any of its employees on Taiwan –

(1) to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States;

(2) To[1] act as provisional conservator of the personal estates of deceased United States citizens; and

(3) to assist and protect the interests of United States persons by performing other acts such as are authorized to be performed outside the United States for consular purposes by such laws of the United States as the President may specify.

(b) Acts by authorized employees

Acts performed by authorized employees of the Institute under this section shall be valid, and of like force and effect within the United States, as if performed by

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[1] So in original. Probably should be "to".

any other person authorized under the laws of the United States to perform such acts.

(Pub. L. 96-8, § 7, Apr. 10, 1979, 93 Stat. 17.)

§ 3307. Exemption from taxation

(a) United States, State, or local taxes

The Institute, its property, and its income are exempt from all taxation now or hereafter imposed by the United States (except to the extent that section 3310(a)(3) of this title requires the imposition of taxes imposed under chapter 21 of Title 26, relating to the Federal Insurance Contributions Act) or by any State or local taxing authority of the United States.

(b) Charitable contributions; transfers for public, charitable, and religious uses; charitable and similar gifts

For purposes of Title 26, the Institute shall be treated as an organization described in sections 170(b)(1)(A), 170(c), 2055(a), 2106(a)(2)(A), 2522(a), and 2522(b) of Title 26.

(Pub. L. 96-8, § 8, Apr. 10, 1979, 93 Stat. 17; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

§ 3308. Activities of United States Government agencies

(a) Sale, loans, or lease of property; administrative and technical support functions and services

Any agency of the United States Government is authorized to sell, loan, or lease property (including interests therein) to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to agencies under this subsection shall be credited to the current applicable appropriation of the agency concerned.

(b) Acquisition and acceptance of services

Any agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct. Whenever the President determines it to be in furtherance of the purposes of this chapter, the procurement of services by such agencies from the Institute may be effected without regard to such laws of the United States normally applicable to the acquisition of services by such agencies as the President may specify by Executive order.

(c) Institute books and records; access; audit

Any agency of the United States Government making funds available to the Institute in accordance with this chapter shall make arrangements with the Institute for the Comptroller General of the United States to have

access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

(Pub. L. 96-8, § 9, Apr. 10, 1979, 93 Stat. 18.)

§ 3309. Taiwan instrumentality

(a) Establishment of instrumentality; Presidential determination of necessary authority

Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to render or provide to or to receive or accept from Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by Taiwan which the President determines has the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with this chapter.

(b) Offices and personnel

The President is requested to extend to the instrumentality established by Taiwan the same number of offices and complement of personnel as were previously operated in the United States by the governing authorities on Taiwan recognized as the Republic of China prior to January 1, 1979.

(c) Privileges and immunities

Upon the granting by Taiwan of comparable privileges and immunities with respect to the Institute and its appropriate personnel, the President is authorized to extend with respect to the Taiwan instrumentality and its appropriate personnel, such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions.

(Pub. L. 96-8, § 10, Apr. 10, 1979, 93 Stat. 18.)

§ 3310. Employment of United States Government agency personnel

(a) Separation from Government service; reemployment or reinstatement upon termination of Institute employment; benefits

(1) Under such terms and conditions as the President may direct any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits with[1] the officer or employee would have had or

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[1] So in original. Probably should be "which".

acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related death, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to April 10, 1979, shall receive the benefits of this section for the period of such service.

(b) Employment of aliens on Taiwan

Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Institute employees not deemed United States employees

Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of Title 18.

(d) Tax treatment of amounts paid Institute employees

(1) For purposes of sections 911 and 913 of Title 26, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United

States as allowances and benefits which are exempt from taxation under section 912 of Title 26.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of Title 26 and Title II of the Social Security Act [42 U.S.C.A. § 401 et seq.].

(Pub. L. 96-8, § 11, Apr. 10, 1979, 93 Stat. 18; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

§ 3310a. Commercial personnel at American Institute of Taiwan

The American Institute of Taiwan shall employ personnel to perform duties similar to those performed by personnel of the United States and Foreign Commercial Service. The number of individuals employed shall be commensurate with the number of United States personnel of the Commercial Service who are permanently assigned to the United States diplomatic mission to South Korea.

(Pub.L. 100-418, Title II, § 2201, Aug. 23, 1988, 102 Stat. 1327.)

§ 3311. Reporting requirements

(a) Texts of agreements to be transmitted to Congress; secret agreements to be transmitted to Senate Foreign Relations Committee and House Foreign Affairs Committee

The Secretary of State shall transmit to the Congress the text of any agreement to which the Institute is a party. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.

(b) Agreements

For purposes of subsection (a) of this section, the term "agreement" includes–

(1) any agreement entered into between the Institute and the governing authorities on Taiwan or the instrumentality established by Taiwan; and

(2) any agreement entered into between the Institute and an agency of the United States Government.

(c) Congressional notification, review, and approval requirements and procedures

Agreements and transactions made or to be made by or through the Institute shall be subject to the same congressional notification, review, and approval requirements and procedures as if such agreements and transactions were made by or through the agency of the United States Government on behalf of which the Institute is acting.

(Pub. L. 96-8, § 12, Apr. 10, 1979, 93 Stat. 20; Pub. L. 98-164, Title X, § 1011(a)(3), Nov. 22, 1983, 97 Stat. 1061.)

§ 3312. Rules and regulations

The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this chapter. During the three-year period beginning on January 1, 1979, such rules and regulations shall be transmitted promptly to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate. Such action shall not, however, relieve the Institute of the responsibilities placed upon it by this chapter.

(Pub. L. 96-8, § 13, Apr. 10, 1979, 93 Stat. 20.)

§ 3313. Congressional oversight

(a) Monitoring activities of Senate Foreign Relations Committee, House Foreign Affairs Committee, and other Congressional committees

The Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress shall monitor–

(1) the implementation of the provisions of this chapter;

(2) the operation and procedures of the Institute;

(3) the legal and technical aspects of the continuing relationship between the United States and Taiwan; and

(4) the implementation of the policies of the United States concerning security and cooperation in East Asia.

(b) Committee reports to their respective Houses

Such committees shall report, as appropriate, to their respective Houses on the results of their monitoring.

(Pub. L. 96-8, § 14, Apr. 10, 1979, 93 Stat. 20.)

§ 3314. Definitions

For purposes of this chapter–

(1) the term "laws of the United States" includes any statute, rule, regulation, ordinance, order, or judicial rule of decision of the United States or any political subdivision thereof; and

(2) the term "Taiwan" includes, as the context may require, the islands of Taiwan and the Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

(Pub. L. 96-8, § 15, Apr. 10, 1979, 93 Stat. 20.)

§ 3315. Authorization of appropriations

In addition to funds otherwise available to carry out the provisions of this chapter, there are authorized to be appropriated to the Secretary of State for the fiscal year 1980 such funds as may be necessary to carry out such provisions. Such funds are authorized to remain available until expended.

(Pub. L. 96-8, § 16, Apr. 10, 1979, 93 Stat. 21.)

§ 3316. Severability of provisions

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to any other person or circumstance shall not be affected thereby.

(Pub. L. 96-8, § 17, Apr. 10, 1979, 93 Stat. 21.)

APPENDIX E

Department of State File #399.72/7-359

(September 17, 1959)

The Acting Secretary of State presents his compliments to His Excellency The Ambassador of the Polish People's Republic and has the honor to acknowledge the receipt of his note No. 45/69/59 of July 3, 1959 informing the Government of the United States of America that instruments of ratification of the Protocol signed at The Hague on September 28, 1955 amending the Convention for the Unification of Certain Rules Relating to International Transportation by Air signed at Warsaw on October 12, 1929 were deposited with the Polish Government by Yugoslavia on April 16, 1959 and France on May 19, 1959, in accordance with Article XXI thereof. Note has also been taken of the statement that similar action was taken by the so-called "German Democratic Republic" on May 19, 1959. As stated in the Secretary of State's note of April 8, 1958, the Government of the United States of America does not recognize the so-called "German Democratic Republic" as a State, and, therefore, it regards the signature and ratification of the Protocol by the so-called "German Democratic Republic" as being without legal effect and attaches no significance thereto.

The Ambassador's note also informs this Government that the United Arab Republic deposited a declaration on March 2, 1959 stating that it considers itself bound by the above-named Convention and Protocol by the instruments of ratification previously submitted by Egypt.

The Acting Secretary of State also has the honor to acknowledge the receipt of the Polish Ambassador's note No. 45/46/59 of August 3, 1959 informing this Government of the deposit of an instrument of accession to the above-named Convention by the so-called "People's Republic of China". Inasmuch as the Government of the United States of America recognizes the Government of the Republic of China as the only legal Government of China and does not recognize the so-called "People's Republic of China", it regards this action as being without legal effect.

Department of State,

Washington, September 17, 1959

399.72/7-359

APPENDIX F

Resolution 2758 (XXVI) of the United Nations General Assembly: Restoration of the Lawful Rights of the People's Republic of China in the United Nations

1976th plenary meeting

25 October 1971

The General Assembly,

Recalling the principles of the Charter of the United Nations,

Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,

Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it.

APPENDIX G

THE JOINT U.S.-CHINA COMMUNIQUE, SHANGHAI, February 27, 1972

President Richard Nixon of the United States of America visited the People's Republic of China at the invitation of Premier Chou En-lai of the People's Republic of China from February 21 to February 28, 1972. Accompanying the President were Mrs. Nixon, U.S. Secretary of State William Rogers, Assistant to the President Dr. Henry Kissinger, and other American officials.

President Nixon met with Chairman Mao Tse-tung of the Communist Party of China on February 21. The two leaders had a serious and frank exchange of views on Sino-U.S. relations and world affairs.

During the visit, extensive, earnest and frank discussions were held between President Nixon and Premier Chou En-lai on the normalization of relations between the United States of America and the People's Republic of China, as well as on other matters of interest to both sides. In addition, Secretary of State William Rogers and Foreign Minister Chi Peng-fei held talks in the same spirit.

President Nixon and his party visited Peking and viewed cultural, industrial and agricultural sites, and they also toured Hangchow and Shanghai where, continuing discussions with Chinese leaders, they viewed similar places of interest.

The leaders of the People's Republic of China and the United States of America found it beneficial to have this

opportunity, after so many years without contact, to present candidly to one another their views on a variety of issues. They reviewed the international situation in which important changes and great upheavals are taking place and expounded their respective positions and attitudes.

The U.S. side stated: Peace in Asia and peace in the world requires efforts both to reduce immediate tensions and to eliminate the basic causes of conflict. The United States will work for a just and secure peace: just, because it fulfills the aspirations of peoples and nations for freedom and progress; secure, because it removes the danger of foreign aggression. The United States supports individual freedom and social progress for all the peoples of the world, free of outside pressure or intervention. The United States believes that the effort to reduce tensions is served by improving communication between countries that through accident, miscalculation or misunderstanding. Countries should treat each other with mutual respect and be willing to compete peacefully, letting performance be the ultimate judge. No country should claim infallibility and each country should be prepared to reexamine its own attitudes for the common good. The United States stressed that the peoples of Indochina should be allowed to determine their destiny without outside intervention; its constant primary objective has been a negotiated solution; the eight-point proposal put forward by the Republic of Vietnam and the United States on January 27, 1972 represents a basis for the attainment of that objective; in the absence of a negotiated settlement the United States envisages the ultimate withdrawal of all U.S. forces from the region consistent with the aim of selfdetermination for each country of Indochina. The United States will

maintain its close ties with and support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. The United States places the highest value on its friendly relations with Japan; it will continue to develop the existing close bonds. Consistent with the United Nations Security Council Resolution of December 21, 1971, the United States favors the continuation of the ceasefire between India and Pakistan and the withdrawal of all military forces to within their own territories and to their own sides of the ceasefire line in Jammu and Kashmir; the United States supports the right of the peoples of South Asia to shape their own future in peace, free of military threat, and without having the area become the subject of great power rivalry.

The Chinese side stated: Wherever there is oppression, there is resistance. Countries want independence, nations want liberation and the people want revolution – this has become the irresistible trend of history. All nations, big or small, should be equal; big nations should not bully the small and strong nations should not bully the weak. China will never be a superpower and it opposes hegemony and power politics of any kind. The Chinese side stated that it firmly supports the struggles of all the oppressed people and nations for freedom and liberation and that the people of all countries have the right to choose their social systems according to their own wishes and the right to safeguard the independence, sovereignty and territorial integrity of their own countries and

oppose foreign aggression, interference, control and subversion. All foreign troops should be withdrawn to their own countries.

The Chinese side expressed its firm support to the peoples of Vietnam, Laos and Cambodia in their efforts for the attainment of their goal and its firm support to the seven-point proposal of the Provisional Revolutionary Government of the Republic of South Vietnam and the elaboration of February this year on the two key problems in the proposal, and to the Joint Declaration of the Summit Conference of the Indochinese Peoples. It firmly supports the eight-point program for the peaceful unification of Korea put forward by the Government of the Democratic People's Republic of Korea on April 12, 1971, and the stand for the abolition of the "U.N. Commission for the Unification and Rehabilitation of Korea." It firmly opposes the revival and outward expansion of Japanese militarism and firmly supports the Japanese people's desire to build an independent, democratic, peaceful and neutral Japan. It firmly maintains that India and Pakistan should, in accordance with the United Nations resolutions on the India-Pakistan question, immediately withdraw all their forces to their respective territories and to their own sides of the ceasefire line in Jammu and Kashmir and firmly supports the Pakistan Government and people in their struggle to preserve their independence and sovereignty and the people of Jammu and Kashmir in their struggle for the right of selfdetermination.

There are essential differences between China and the United States in their social systems and foreign policies. However, the two sides agreed that countries, regardless of their social systems, should conduct their

relations on the principles of respect for the sovereignty and territorial integrity of all states, non-aggression against other states, non-interference in the internal affairs of other states, equality and mutual benefit, and peaceful coexistence. International disputes should be settled on this basis, without resorting to the use or threat of force. The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.

With these principles of international relations in mind the two sides stated that:

> progress toward the normalization of relations between China and the United States is in the interests of all countries:
>
> both wish to reduce the danger of international military conflict;
>
> neither should seek hegemony in the Asia-Pacific region and each is opposed to efforts by any other country or group of countries to establish such hegemony; and
>
> neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

Both sides are of the view that it would be against the interests of the peoples of the world for any major country to collude with another against other countries, or for major countries to divide up the world into spheres of interest.

The two sides reviewed the long-standing serious disputes between China and the United States. The Chinese reaffirmed its position: The Taiwan question is the crucial

question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities which aim at the creation of "one China, one Taiwan," "one China, two governments," "two Chinas," and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

The U.S. side declared: The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese them-selves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes.

The two sides agreed that it is desirable to broaden the understanding between the two peoples. To this end, they discussed specific areas in such fields as science, technology, culture, sports and journalism, in which people-to-people contacts and exchanges would be mutually beneficial. Each side undertakes to facilitate the further development of such contacts and exchanges.

Both sides view bilateral trade as another area from which mutual benefit can be derived, and agreed that economic relations based on equality and mutual benefit are in the interest of the peoples of the two countries. They agree to facilitate the progressive development of trade between their two countries.

The two sides agreed that they will stay in contact through various channels, including the sending of a senior U.S. representative to Peking from time to time for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest.

The two sides expressed the hope that the gains achieved during this visit would open up new prospects for the relations between the two countries. They believe that the normalization of relations between the two countries is not only in the interest of the Chinese and American peoples but also contributes to the relaxation of tension in Asia and the world.

President Nixon, Mrs. Nixon and the American party expressed their appreciation for the gracious hospitality shown them by the Govern-ment and people of the People's Republic of China.

APPENDIX H

Diplomatic Relations Between the United States and the People's Republic of China

Address to the Nation. December 15, 1978

Good evening.

I would like to read a joint communique which is being simultaneously issued in Peking at this very moment by the leaders of the People's Republic of China:

[At this point, the President read the text of the joint communique, which reads as follows:]

JOINT COMMUNIQUE ON THE ESTABLISHMENT OF DIPLOMATIC RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF CHINA

JANUARY 1, 1979

The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979.

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

The United States of America and the People's Republic of China reaffirm the principles agreed on by the two sides in the Shanghai Communique and emphasize once again that:

- Both wish to reduce the danger of international military conflict.

- Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony.
- Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.
- The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.
- Both believe that normalization of Sino-American relations is not only in the interest of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

The United States of America and the People's Republic of China will exchange Ambassadors and establish Embassies on March 1, 1979.

Yesterday, our country and the People's Republic of China reached this final historic agreement. On January 1, 1979, a little more than 2 weeks from now, our two Governments will implement full normalization of diplomatic relations.

As a nation of gifted people who comprise about one-fourth of the total population of the Earth, China plays, already, an important role in world affairs, a role that can only grow more important in the years ahead.

We do not undertake this important step for transient tactical or expedient reasons. In recognizing the People's

Republic of China, that it is the single Government of China, we are recognizing simple reality. But far more is involved in this decision than just the recognition of a fact.

Before the estrangement of recent decades, the American and the Chinese people had a long history of friendship. We've already begun to rebuild some of those previous ties. Now our rapidly expanding relationship requires the kind of structure that only full diplomatic relations will make possible.

The change that I'm announcing tonight will be of great long-term benefit to the peoples of both our country and China–and, I believe, to all the peoples of the world. Normalization–and the expanded commercial and cultural relations that it will bring–will contribute to the well-being of our own Nation, to our own national interest, and it will also enhance the stability of Asia. These more positive relations with China can beneficially affect the world in which we live and the world in which our children will live.

We have already begun to inform our allies and other nations and the Members of the Congress of the details of our intended action. But I wish also tonight to convey a special message to the people of Taiwan–I have already communicated with the leaders in Taiwan–with whom the American people have had and will have extensive, close, and friendly relations. This is important between our two peoples.

As the United States asserted in the Shanghai Communique of 1972, issued on President Nixon's historic visit, we will continue to have an interest in the peaceful

resolution of the Taiwan issue. I have paid special attention to ensuring that normalization of relations between our country and the People's Republic will not jeopardize the well-being of the people of Taiwan. The people of our country will maintain our current commercial, cultural, trade, and other relations with Taiwan through nongovernmental means. Many other countries in the world are already successfully doing this.

These decisions and these actions open a new and important chapter in our country's history and also in world affairs.

To strengthen and to expedite the benefits of this new relationship between China and the United States, I am pleased to announce that Vice Premier Teng has accepted my invitation and will visit Washington at the end of January. His visit will give our Governments the opportunity to consult with each other on global issues and to begin working together to enhance the cause of world peace.

These events are the final result of long and serious negotiations begun by President Nixon in 1972, and continued under the leadership of President Ford. The results bear witness to the steady, determined, bipartisan effort of our own country to build a world in which peace will be the goal and the responsibility of all nations.

The normalization of relations between the United States and China has no other purpose than this: the advancement of peace. It is in this spirit, at this season of peace, that I take special pride in sharing this good news with you tonight.

Thank you very much.

NOTE: The President spoke at 9 p.m. from the Oval Office at the White House. The address was broadcast live on radio and television.

APPENDIX I

Diplomatic Relations Between the United States and the People's Republic of China

United States Statement. December 15, 1978

As of January 1, 1979, the United States of America recognizes the People's Republic of China as the sole legal government of China. On the same date, the People's Republic of China accords similar recognition to the United States of America. The United States thereby establishes diplomatic relations with the People's Republic of China.

On that same date, January 1, 1979, the United States of America will notify Taiwan that it is terminating diplomatic relations and that the Mutual Defense Treaty between the United States and the Republic of China is being terminated in accordance with the provisions of the Treaty. The United States also states that it will be withdrawing its remaining military personnel from Taiwan within four months.

In the future, the American people and the people of Taiwan will maintain commercial, cultural, and other relations without official government representation and without diplomatic relations.

The Administration will seek adjustments to our laws and regulations to permit the maintenance of commercial, cultural, and other non-governmental relationships in the new circumstances that will exist after normalization.

The United States is confident that the people of Taiwan face a peaceful and prosperous future. The United

States continues to have an interest in the peaceful resolution of the Taiwan issue and expects that the Taiwan issue will be settled peacefully by the Chinese themselves.

The United States believes that the establishment of diplomatic relations with the People's Republic will contribute to the welfare of the American people, to the stability of Asia where the United States has major security and economic interest, and to the peace of the entire world.

APPENDIX J

Weekly Compilation of Presidential Documents
Monday, November 3, 1997
Volume 33 – Number 44
Pages 1657-1696
Week Ending Friday, October 31, 1997
The President's News Conference with President Jiang
October 29, 1997

* * *

Taiwan

Q. Mr. President, I have a question for both President Jiang and President Clinton. President Clinton, you stated your position with regard to Taiwan that this is a question for the Chinese people to resolve. But we all understand you have brokered peace in Bosnia, in the Middle East. Do you see any role for the United States to play in the securing of a permanent peaceful environment in the Taiwan Strait?

And for President Jiang, about the cross-strait dialog. President Clinton said that he has urged President Jiang to resume the interrupted dialog. I wonder if President Jiang will respond positively and take some measures to resume the dialog as soon as possible.

President Clinton. First of all, I think the most important thing the United States can do to facilitate a peaceful resolution of the differences is to adhere strictly to the one China policy we have agreed on, to make it clear that within the context of that one China policy, as articulated in the communiques and our own laws, we will maintain friendly, open relations with the people of Taiwan and China but that we understand that this issue has to be

resolved and resolved peacefully and that if it is resolved in a satisfactory way, consistent with statements made in the past, then Asia will be stronger and more stable and more prosperous. That is good for the United States. And our own relations with China will move on to another stage of success.

I think the more we can encourage that, the better off we are. But I think in the end, since so much investment and contact has gone on in the last few years between Taiwan and China, I think the Chinese people know how to resolve this when the time is right, and we just have to keep saying we hope the time will be right as soon as possible. Sooner is better than later.

President Jiang. To answer your question in rather brief terms, all in all, our policy is one of peaceful reunification and one country-two systems. As as for more detailed elaboration on that–a few years ago I made my eight-point proposal along that line, and at the just concluded 15th national congress of the Chinese Communist Party, I also delivered a report which gave a rather comprehensive elaboration on this. Therefore, I will not repeat them here.

* * *

APPENDIX K

Excerpts from 4/30/98
Albright Press Conference, China

[LOGO]
Secretary of State Madeleine K. Albright
Press Conference, Beijing International Club Hotel
Beijing, China, April 30, 1998
As released by the Office of the Spokesman
U.S. Department of State

* * *

QUESTION: For China, Taiwan is on top of their agenda. Is the United States prepared or not prepared to act as a mediator between the two sides to pursue or to push the peaceful reunification of China? Is the United States being pressed by China to phase out the arms sales of the United States to Taiwan?

SECRETARY ALBRIGHT: First of all – I think it's very important – I made a point to them and I can make to you, is that we have no change in our China policy. Although we have a one-China policy – not a "two China," not a "one China and one Taiwan" policy – and we do not support Taiwan independence or their membership in international organizations that are based on statehood. I think that we are glad when there is dialogue between the two of them, in terms of trying to get a peaceful resolution to the issue, and we think that is the best way to approach that. Our relationship in terms of

arms is based on the Taiwan Relations Act, and we make that very clear.

* * *

APPENDIX L

Weekly Compilation of Presidential Documents
Monday, July 6, 1998
Volume 34 – Number 27
Pages 1243-1309
Week Ending Friday, July 3, 1998
Remarks in a Roundtable Discussion on Shaping China for the 21st Century in Shanghai, China
June 30, 1998

* * *

THE PRESIDENT: . . . I do believe that my coming here and the work we've done in the last two years, President Jiang's trip to the United States, has helped to resolve some of the misunderstandings. I had a chance to reiterate our Taiwan policy, which is that we don't support independence for Taiwan, or two Chinas, or one Taiwan-one China. And we don't believe that Taiwan should be a member in any organization for which statehood is a requirement. So I think we have a consistent policy.

* * *

APPENDIX M

Excerpts from 7/6/98
Albright Interview on CNN's "Larry King Live"

[LOGO]

Secretary of State Madeleine K. Albright
Interview on CNN's "Larry King Live" with Larry King
Washington, DC, July 6, 1998
As released by the Office of the Spokesman, July 7, 1998
U.S. Department of State

* * *

LARRY KING: Today your department had to reassure the Taiwanese that there's been no change in policy. Although on the subject of Taiwan, I think you have to admit, the President was pretty strong.

SECRETARY ALBRIGHT: Well, the President reiterated what has been our policy now since 1972, frankly, that we –

LARRY KING: Yes, well, usually we don't use that clear of language.

SECRETARY ALBRIGHT: Well, I said the same thing when I was there a month previously. This has been our standard way of saying it. The President repeated what is our policy – we do have a relationship with Taiwan, which is run by the Taiwan Relations Act. That's an unofficial relationship with the Taiwanese; that will not change. But our policy has been and continues to be a one-China policy, and we want them to have a peaceful dialogue to resolve this issue.

* * *

APPENDIX N

Weekly Compilation of Presidential Documents
Monday, July 26, 1999
Volume 35 – Number 29
Pages 1387-1470
Week Ending Friday, July 23, 1999

The President's News Conference

July 21, 1999

* * *

"One China" Policy and Taiwan

Q. Mr. President, in U.S. treaty relations, is it obligated to defend Taiwan militarily if it abandons the "one China" policy? And would the U.S. continue military aid if it continues, if it pursues separatism?

[[Page 1440]]

The President. Well, let me say, first of all, a lot of those questions are governed by the Taiwan Relations Act, which we intend to honor. Our policy is clear: We favor the "one China" policy; we favor the cross-strait dialogs. The understanding we have had all along with both China and Taiwan is that the differences between them would be resolved peacefully. If that were not to be the case, under the Taiwan Relations Act, we would be required to view it with the gravest concern.

But I believe that both China and Taiwan understand this. I believe that they want to stay on a path to prosperity and dialog. And we have dispatched people today, as the morning press reports, to do what we can to press that case to all sides. This is something that we don't want to see escalate, and I believe that what Mr. Lee said yesterday was trying to move in that direction. We all understand how difficult this is, but I think that the pillars of the policy are still the right ones. The "one China" policy is right; the cross-strait dialog is right; the peaceful approach is right. And neither side, in my judgment, should depart from any of those elements.

Q. So we would still have to go to war with China if it decided to break away?

The President. I will say what I've already said. The Taiwan Relations Act governs our policy. We made it clear. And I have – as you remember, a few years ago we had a physical expression of that, that we don't believe there should be any violent attempts to resolve this, and we would view it very seriously. But I don't believe there will be. I think that both sides understand what needs to be done.

Terry [Terence Hunt, Associated Press].

Q. Mr. President, do you think that President Lee was unnecessarily provocative in trying to redefine the nature of the Taiwan-Chinese relationship? And is the United States trying to send a signal by delaying a Pentagon mission which was going to Taiwan to assess its air defense needs? And further, finally, you said that you still believe in a "one China" policy. How do you address

Senator Helms' criticism that it's a – that that policy is a puzzling fiction?

The President. Well, I don't think it's a puzzling fiction. I think that – but if Senator Helms means that today they're not, in fact, unified, then that's true. But the Chinese tend to take a long view of these things and have made clear a sensitivity to the different system that exists on Taiwan and a willingness to find ways to accommodate it, as they did in working with Hong Kong, and perhaps, even going beyond that.

So I think the important thing is to let – they need to take the time necessary to work this out between themselves in a peaceful way. That is clearly in both their interests. And I'm still not entirely sure, because I have read things which seem to resonate both ways on this, exactly what the Lee statements were entitled – trying to convey.

But I think that both sides are now quite aware of the fact that they need to find a way to pursue their destinies within the framework that we have followed these last several years, which I might add has allowed both places to prosper and to grow, to do better, and to have more contacts, more investment, and underneath the rhetoric, quite a bit more reconciliation. So I would hope that we would stay with what is working and not depart from it.

Q. Is that the meaning of the delay of the Pentagon mission to assess the ——

The President. I didn't think this was the best time to do something which might excite either one side or the other and imply that a military solution is an acceptable

alternative. If you really think about what's at stake here, it would be unthinkable. And I want – I don't want to depart from any of the three pillars. I think we need to stay with "one China"; I think we need to stay with the dialog; and I think that no one should contemplate force here.

* * *

APPENDIX O

Excerpts from 7/25/99
Albright Press Conference, Singapore

[LOGO]
Secretary of State Madeleine K. Albright
Press Conference, Four Seasons Hotel
Singapore, July 25, 1999
As released by the Office of the Spokesman
U.S. Department of State

* * *

QUESTION: Madam Secretary, could you tell us how confident you are that tensions between China and Taiwan are now easing and that you sense the Chinese are backing away from military threat?

SECRETARY ALBRIGHT: I don't want to characterize it at all the way that you have. I would say that we restated our position about our one China policy, the importance of a direct dialogue and a peaceful resolution of the issue. . . .

APPENDIX P

[CHINESE]
THE EMBASSY OF THE
PEOPLE'S REPUBLIC OF CHINA
2300 Connecticut Avenue, N.W.
Washington, D.C. 20008

CE 087/98

The Embassy of the People's Republic of China in the United States of America presents its compliments to the Department of State of the United States of America and has the honor to state as follows:

The Chinese government has noticed with deep concern the brief submitted by the United States government, as amicus curiae, to the U.S. Court of Appeals for the Ninth Circuit on a lawsuit by Mingtai Fire & Marine Insurance Co., Ltd. against United Parcel Service, Inc., wherein it states that the United States government has not recognized in the People's Republic of China a power to bind Taiwan to China's commitment to the 1929 Warsaw Convention. This statement contradicts the principles enshrined in the 1979 Joint Communique on the Establishment of Diplomatic Relations between China and the United States, in which the United States government recognized the government of PRC as the sole legal government of China, and Taiwan as part of China. It also represents a breach of its own international commitments by the U.S. government. The Chinese government hereby firmly opposes such statement.

The 1979 Joint Communique on the Establishment of Diplomatic Relations forms the legal basis of China-U.S. relations. It is also the basic guideline for both sides to

handle the Taiwan question. Insofar as international law is concerned, the exchange of diplomatic recognition between China and U.S. and the U.S. recognition of the PRC government as the sole legal government of China mean U.S. recognition that in international relations the People's Republic of China represents the whole of China including Taiwan. Hence China's international commitments bind every part of China's territory. To deny the People's Republic of China of its legal right to apply an international treaty it has adhered to to Taiwan which is part of Chinese territory has no legal bases whatsoever under international law.

According to the general principles of international law, an international agreement acceded to by a sovereign state shall, unless otherwise provided for, apply to its entire territory. The People's Republic of China declared at the time of its accession to the Warsaw Convention in 1958 that the Convention would certainly apply to Taiwan. This act remains valid under international law. Even if the Convention failed to apply to China-U.S. relations, as the U.S. side argues, for lack of mutual diplomatic recognition before 1979, the establishment of diplomatic relations in 1979 should have had a legal consequence of activating mutual application of all international treaties between them.

The Chinese government urges the U.S. side to seriously reconsider its brief to the U.S. court which contains languages incompatible with its commitment to the "One China Policy" and its legal obligations under international law, and take practical steps to fully respect China's sovereignty and territorial integrity.

The Embassy of China avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, D.C., October 16, 1998
[SEAL]

APPENDIX Q

Excerpts from Background Notes: Taiwan, October 1998

Released by the Bureau of East Asian and Pacific Affairs
U.S. Department of State

* * *

Maintaining diplomatic relations with the P.R.C. has been recognized to be in the long-term interest of the United States by six consecutive administrations; however, maintaining strong, unofficial relations with Taiwan is also in the U.S. interest. The United States is committed to these efforts because they are important for America's global position and for peace and stability in Asia. In keeping with its one-China policy, the U.S. does not support "two Chinas," "one China, one Taiwan," or Taiwan independence. Nor does the United States support Taiwan's efforts to become a member of the UN or other organizations in which membership is limited to states. The U.S. does support Taiwan's membership in other appropriate international organizations, such as the APEC forum and the Asian Development Bank, in which statehood is not a requirement for membership. In addition, the U.S. supports opportunities for Taiwan's voice to be heard in organizations where statehood is not a requirement.

Supreme Court, U.S.
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No. 99-319

In the

Supreme Court of the United States

MINGTAI FIRE & MARINE INSURANCE CO., LTD.,

Petitioner,

vs.

UNITED PARCEL SERVICE, INC. and
UNITED PARCEL SERVICE INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

MICHAEL W. LODWICK
Counsel of Record
PORTER, GROFF & LODWICK
A LAW CORPORATION
110 Pine Avenue, 11th Floor
Long Beach, California 90802-4430
(562) 495-1200

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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PETITIONER'S SUPPLEMENTAL BRIEF

As permitted by S. Ct. R. 15.8, petitioner Mingtai Fire & Marine Insurance Co., Ltd. files this supplemental brief to call attention to intervening matter not available at the time it filed its petition for writ of certiorari on August 23, 1999. This intervening matter consists of two official foreign-policy statements – one by President Clinton, the other by the U.S. Mission to the United Nations – which demonstrate that the court of appeals erred when it held that China's accession to the Warsaw Convention was not effective for Taiwan because the U.S. treats Taiwan as independent of China.

In September 1999, the U.S. opposed a proposal to make Taiwan a member of the United Nations, citing a 27-year-long commitment to the one-China policy created by President Nixon.

On September 11, 1999, a reporter in Auckland, New Zealand asked President Clinton – who was attending the Asia Pacific Economic Cooperation summit – "Mr. President, what's your message when it comes to Taiwan?"[1] President Clinton replied:

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[1] Remarks by the President and President Jiang Zemin of the People's Republic of China in Photo Opportunity, Governor's General Residence, Auckland, New Zealand (Sept. 11, 1999), 1999 WL705534 (White House) (Sept. 12, 1999).

> My message is that our policy has not and will not change. We favor one China. We favor a peaceful approach to working out the differences. We favor the cross-strait dialogue. Our policy has not changed and it will not change.[2]

Four days later, the U.S. formally opposed a move to bring to the floor of the U.N. General Assembly a resolution that would recognize Taiwan as an independent state and grant it membership of the United Nations. In a statement made by Robert Rosenstock of the U.S. Mission to the U.N., the U.S. – breaking years of silence on the issue of Taiwan membership – opposed treating Taiwan as independent of China.[3] "Asked why the United States decided this year to speak out against placing the Taiwan item on the agenda, a U.S. official said: 'We wanted to make clear that our "one-China" policy is unchanged.' "[4]

Here is the text of the U.S. position as stated at the U.N. on September 15, 1999:

U.S. Position on Taiwan

> The policy of the United States toward China has been consistent and clear over the course of the last twenty-seven years, and the terms of six U.S. Presidents. This long-standing policy is set forth in the three communiques that

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[2] *Id.*

[3] "U.S. speaks against putting Taiwan on U.N. agenda," CNN.com.asianow, Sept. 16, 1999 (visited Sept. 24, 1999) <http://cnn.com/ASIANOW/east/9909/15/bc/taiwan.china.un.reut/index.html>.

[4] *Id.*

> we have jointly issued with the People's Republic of China: the Shanghai Communiqué of 1972; the Nationalization Communiqué of December 15, 1978; and the Sino-U.S. Communiqué of August 17, 1982; as well as the Taiwan Relations Act. President Clinton's Administration, like every Administration since President Nixon, has repeatedly reaffirmed this policy both publicly and privately, at the highest levels.
>
> Most recently, on September 10, Secretary Albright stated once again that there are three pillars of our position on China: we have a "one China" policy; cross-Strait problems should be resolved peacefully; and this should be done through dialogue.[5]

This statement of the "U.S. Position on Taiwan" contradicts the argument made in this case by the United States as amicus curiae. In the court of appeals, the amicus argued that the court must treat Taiwan as independent of China, insisting "[t]he United States has not recognized in the PRC a power to bind Taiwan."[6] In its opinion, the court explained it was following the representations made in the amicus brief and at oral argument in refusing to enforce the Warsaw Convention.[7] But

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[5] "U.S. Position on Taiwan," enclosed in a letter from James G. Hergen, U.S. Dep't of State, to petitioner's counsel, Oct. 1, 1999. Mr. Hergen is the Department of State's Assistant Legal Adviser for East Asian and Pacific Affairs, and appeared as counsel on the Brief for the United States as Amicus Curiae, Docket No. 98-15088 (9th Cir. 1998) (hereinafter "Amicus Brief").

[6] Amicus Brief at 1.

[7] *Mingtai Fire & Marine Ins. Co. v. United Parcel Service*, 177 F.3d 1142, 1146 (9th Cir. 1999) (Pet. App. 8-9).

during the pendency of this petition, the U.S. has demonstrated that it does not recognize Taiwan's independence of China by opposing the proposal to make Taiwan a U.N. member. The position urged in the amicus brief and adopted by the court of appeals cannot be reconciled with the official statement of the "U.S. Position on Taiwan" made at the U.N. just three weeks ago.

Advising that the U.S. has maintained its one-China policy "over the course of the last twenty-seven years, and the terms of six U.S. Presidents,"[8] the U.S. statement at the U.N. supports Mingtai's observation that this country's one-China policy dates from President Nixon's joint promulgation of the Shanghai Communiqué in 1972.[9]

In the light of the "U.S. Position on Taiwan," the court of appeals' decision, adopting the amicus argument for an independent Taiwan, should not stand. The court's invalidation of China's accession to the Warsaw Convention for Taiwan should be reversed because it conflicts directly with the one-China policy that has been the U.S. policy for 27 years – a policy most notably applied on September 15, 1999 to oppose Taiwan's latest bid for U.N. membership.

Dated: October 6, 1999.

Respectfully submitted,

MICHAEL W. LODWICK
OF PORTER, GROFF & LODWICK
Counsel of Record for Petitioner

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[8] "U.S. Position on Taiwan," *supra* note 5.

[9] Mingtai's Petition for Writ of Certiorari at 20.